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UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

MIDWAY MANUFACTURING CO.

VS.

THE MAGNAVOX CO.

NUMBER
74 CIV 1657 CBM

VS.

SANDERS ASSOCIATES, INC.

* * * * *

UNITED STATES DISTRICT COURT

OF

ILLINOIS - EASTERN DIVISION

THE MAGNAVOX CO., ET AL

CONSOLIDATED
74 C 1030
74 C 2510

REPRESENTATIVE VS. BALLY MANUFACTURING CORP., ET AL

* * * * *

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

ATARI, INC.

C. A. NUMBER
C 75 1442 WTS

VS.

THE MAGNAVOX CO. AND SANDERS
ASSOCIATES, INC.

ORIGINAL

Deposition of RICHARD I. SELIGMAN taken by Subpoena
and notice at the offices of Sanders Associates, Inc., Daniel
Webster Highway South, Nashua, New Hampshire, on November 20,
1975, commencing at 10:00 a.m.

APPEARANCES

Representing Midway Manufacturing Co., Bally Manufacturing Corp., and Empire Distributing:

Sanders #2 Donald L. Welsh, Esquire, and A. Sidney Katz,
Esquire, 135 South LaSalle Street, Chicago,

Sanders #3 Illinois Telephone Spaceman 43

Sanders #4 Phonogram 43

Representing Sanders Associates, Inc., and The Magnavox Co.:
Sanders #5

Theodore W. Anderson, Esquire, and James T.
Williams, Esquire, 77 West Washington Street
Chicago, Illinois 87

Representing The Magnavox Co.:

Thomas A. Briody, Esquire, 1700 Magnavox Way,
Fort Wayne, Indiana

Representing Atari, Inc.:

Thomas O. Herbert, Esquire, 160 Sansome Street,
15th Floor, San Francisco, California

(DEPOSITION OF RICHARD I. SELIGMAN)

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been served upon a corporation under Rule 30-B-6, which we think is a nullity or, at least, no different than Rule 30-B-6. In consequence, the Notice of Practice under Rule 30-B-6, that is, summons, is not the proper procedure under Rule 30-B-6 for serving any other party except a party. We will proceed with this deposition under the Notice and with the understanding that the subpoena is no more or less than the notice provided for in the rules with

retract to parties. In that regard to
(DEPOSITION OF RICHARD I. SELIGMAN) we have

prepared and will now turn you now an
(The Deponent was duly sworn.)

INTERROGATORIES PROPOUNDED BY MR. WELSH

MR. ANDERSON: As a first threshold matter, we are proceeding this morning with Mr. Richard Seligman as the designee of the Plaintiff, Sanders Associates, Inc., in response to the Notice of Deposition under Rule 30-B-6. We note that Sanders Associates, Inc., has also been served with a subpoena under Rule 30-B-6, which we think is a nullity or, at least, no different than in its consequences, the Notice to Parties under Rule 30-B-6, that a subpoena is not the proper procedure under Rule 30-B-6 or under any other rule against a party. We will proceed with this deposition under the Notice and with the understanding that the subpoena is no more or less than the Notice provided for in the rules with

respect to parties. In that regard to make our position of record, we have prepared and will serve upon you now an objection to the subpoena Duces Tecum of which was served on Sanders Associates, Inc. As a second threshold matter, we have produced documents for you on several occasions in the past in response to, first, Interrogatories and then the request for production of documents. We produced some additional documents this morning. Among those documents are a group that we consider to be confidential and we already have a stipulation between you, Mr. Welsh, and Midway, your client, and our firm, and our client, Magnavox and Sanders for handling such confidential documents and those documents, as you understand from our conversations, are being produced pursuant to our confidential stipulation. I think you indicated that was agreeable at this time, is that correct?

MR. WELSH: Yes.

MR. ANDERSON: I might point

out that we were advised by Sanders long after we entered into our stipulation that the word "confidential" could not be used to stamp these documents because of the confusion that that generates with respect to the Government classification "confidential", which it is exclusively used for Sanders for designating the any Government confidentials and we have had stamped these documents with another stamp, "Company Private Data", and that is used by the company on other things. Some of the other documents that we produced for you that we don't consider to be as in any confidential, we have penned in the number 741030. Every document that is classified by "confidential" for purposes of this lawsuit has been stamped with a rubber stamp, "Company Private Data", and under that in longhand, C-1030. Any other stamps of any kind will not indicate that this document has been classified as a "confidential" for purposes of this litigation, if that is all right.

order of court MR. WELSH: Yes.

MR. ANDERSON: The next aspect of the general situation: You indicated that you would like to identify the files that we have produced that contain the company private data or the confidential data, and we have no objection to having Mr. Seligman identify the files and any aspects of where they came from or who produced them, with Mr. Herbert and Mr. Bushnell in the room, and on a record that will be filed with the court. However, we would object to going into the contents of any of those confidential files in any depth that would become a part of the record in the case with Mr. Bushnell or Mr. Herbert present. It may be the case that Mr. Herbert may ultimately sign a Protective Order and then we will show the contents of these files to him on the same basis that we are showing them to you as counsel for Midway. There is no condition under which we will permit Mr. Bushnell to see the files unless by

order of court at a later stage of these proceedings. Mr. Herbert, is that acceptable? MR. HERBERT: It sounds like it is but do you have a copy of the Protective Order or is it reduced to writing? It is my understanding that you and I agree. MR. ANDERSON: Yes, it is reduced to writing and, yes, we do have a copy of it. I think that completes our preliminaries. There is one other thing that you and I discussed yesterday and I would like to make part of the record, the fact that Mr. Seligman is a lawyer and we have produced Mr. Seligman because he is, we think, the most knowledgeable about where the files came from, what's in it and who searched for them and so forth. As I indicated to you on another case, we have recently had a situation arise where an adversary took the position by producing an attorney as the designated witness under Rule 30-B-6, there was a waiver of attorney-client privilege. I

would not be willing to produce ~~any document~~ Mr. Seligman, if there was any implication of waiving of privilege by designating him as Sanders' representative. I would rather produce someone less able to testify, ~~court~~ rather than produce a lawyer and risk the waiver. It is my understanding that you and I agree and I would like Mr. Herbert to join into the agreement that by producing Mr. Seligman, a lawyer, under Rule 30-B-6, to identify documents, we are not waiving the attorney-client privilege at all. At a later date, if you wish to take ~~any witness~~ Mr. Seligman's deposition, this agreement stipulation doesn't apply to that, and we'll take our stand at that time with respect to Mr. Seligman as a specified noticed witness.

On the 20th day of September, 1968, MR. HERBERT: That is acceptable. MR. WELSH: By agreement of counsel. MR. WELSH: That is acceptable to me. ~~for Daily, Kidney and Esquire,~~ ~~please~~ Let the record show that this deposition of Sanders Associates, Inc.,

is being taken under Rule 30-B-6 pursuant to Notice served by Plaintiff, the case of Midway Manufacturing Company versus the Magnavox Company and Sanders Associates, Inc., and is in the United States District Court for the Southern District of New York, Civil Action number 74 Civ 1657 CBM, and yes, by Defendants Bally Manufacturing, Inc., Corporation, Midway Manufacturing Company, and Empire Distributing, Inc., in the United States District Court for these has Northern District of Illinois, Eastern Division, in the case of the Magnavox Company, et al, versus Bally Manufacturing Corporation, et al, consolidated Civil Action numbers 74 C 1030 and 74 C 2510. Those Notices called for commencement of the depositions on the 20th day of November, 1975, at the Holiday Inn in Manchester, New Hampshire. By agreement of counsel for Magnavox and Sanders and counsel for Bally, Midway and Empire, the place of taking of the deposition was changed to the corporate offices of

Sanders Associates on Daniel Webster

South in Nashua, New Hampshire. Mr. Herbert,
would you like to -- I guess as far as the
Rule 30-B-6 is concerned, there was no
Notice in your case, is that correct?

MR. HERBERT: No. Notice
our deposition for the employees themselves,
and in our Notice in the case, the Notice
is for the United States District Court,
Northern District of California, Civil
Action number C-751442 WTS, which case has
been transferred to Chicago.

MR. WELSH: I might say that
continuing after the deposition of
Sanders Associates will be depositions of
employees of Sanders Associates pursuant
also to Notice in the two suits indicated
above in the two courts. The witnesses
designated in the Notice are Mr. Ralph
Baer, H. W. Campman, Jr., John Sauter,
Daniel C. Chisholm, Louis Etlinger,
William L. Harrison, John A. Melrose,
William T. Rusch, and Richard Seligman,
and William Stapanishen.

MR. ANDERSON: Mr. Welsh, you requested in the Notice all of these people for the same time, dates and place, and, I think; in response to our question, you have advised us of a sequence in which you wanted to take them, and it might be well to make that of record. I also might mention for the record, as I think you have recognized, perhaps, Mr. Sauter is no longer an employee of Sanders Associates, Inc., and not under Sanders' control, and neither is Mr. Stapanishen or Mr. Melrose.

MR. WELSH: Yes. I believe you advised us of their no longer being employed. We advised Mr. Williams by telephone of the proposed order of taking of the depositions and they were first, a person or persons designated by Sanders to testify with respect to documents and things set forth in the attachment to the subpoena to Sanders. Next, Ralph H. Baer, William T. Rusch, William L. Harrison, David Batchelder, H. W. Campman, Jr.; next were listed Mr. Stapanishen and Mr. Sauter,

whom you have indicated are no longer employees. They were followed by Daniel C. Chisholm, John Melrose, Louis Etlinger, and Richard I. Seligman. Now, in our telephone conversation with Mr. Williams, he indicated that Mr. Melrose was employed on a consulting basis with or by Sanders, but in a letter, following our confirming letter, that he is no longer employed by Sanders. Did you mean not employed full-time or not employed on a consulting basis?

MR. WILLIAMS: Perhaps Mr. Seligman knows more. As far as I know, he's not a full-time employee and not under the control of Sanders Associates.

MR. WELSH: You have indicated you would not be responsible for producing Mr. Melrose. I'm wondering, as long as we're here, and if we reach him, you will undertake to persuade him to appear.

MR. ANDERSON: We won't tell him not to.

MR. WELSH: A subpoena was served on him in Manchester and by

agreement of counsel we changed the time and place to Nashua and we agreed upon the order of examining the witnesses, expecting that they were employees, thus subject to some control by Sanders. If there is going to be any difficulty with respect to Mr. Melrose, I would like to know it now, so that we can take proper steps.

MR. ANDERSON: Now, according to Mr. Williams' letter, said that Sanders will contact Melrose and notify him that he should not appear at the time and place designated in the subpoena to him. However, Sanders cannot be responsible for producing him at some further time.

MR. WELSH: Although you cannot be responsible, is it possible that you will be able to persuade him to appear in the order of examining witnesses that we have indicated?

MR. ANDERSON: We will advise him of the alternate date and place and ask him to appear, but we cannot be responsible --

MR. WELSH: If he won't appear, it is beyond your control. In other words, do I understand correctly that you will make every effort to have him be here?

MR. ANDERSON: We'll ask him to. When do we want him?

MR. WELSH: Can we find out if he will be able to appear in the order that we have designated?

MR. ANDERSON: We can't give him any information. He's pretty well down the list, and I think it probably will be some time in December before you get to him, and I suggest that you just defer that question until we get closer to the date, unless you want to name a firm date and place and time for him.

MR. WELSH: I just thought, if there was any question of his voluntarily appearing from a request by Sanders, we should know it.

MR. ANDERSON: We'll agree to notify him when you give us a firm time and place and date, and we will give you

his response. If he says yes, he will be there, we will report this to you and if he says he wants a subpoena, we'll report that to you as well.

MR. WELSH: All right.

1 Q (By Mr. Welsh) Where do you live, Mr. Seligman?

A 8 Whitton Drive, Nashua, New Hampshire.

2 Q You're the witness designated by Sanders Associates to testify with respect to the documents requested in the Notice of Deposition? You're employed by Sanders Associates, I take it?

A Yes.

3 Q What is your position with Sanders Associates?

A I'm a patent attorney.

4 Q Do you have a title other than patent attorney?

A Assistant Patent Counsel.

5 Q Whom do you report to as a patent counsel?

A Louis Etlinger.

6 Q What is his position?

A Director of Patents and Licensing.

7 Q Are you in a particular department?

A In the Patent Department.

8 Q Where does the Patent Department fall in the corporate organization?

- A. Mr. Etlinger reports to Daniel Chisholm, a Vice-President of Sanders.
- Q. Is Mr. Chisholm -- does his Vice-Presidency have any particular area of responsibility, do you know?
- A. I think it has to do with corporate planning.
- Q. Do you know who Mr. Chisholm reports to?
- A. No.
- Q. How long have you had your present position of Assistant Patent Counsel?
- A. Possibly a little more than three years.
- Q. Were you employed by Sanders prior to that time?
- A. Yes.
- Q. How long have you been employed by Sanders?
- A. Since June of 1966.
- Q. Have you been a patent attorney during that entire time? Subpoena coming in which is here in the file.
- A. Yes.
- Q. Did you have any other title prior to your becoming Assistant Patent Counsel?
- A. Patent Attorney.
- Q. Was there an Assistant Patent Counsel prior to that time?
- A. No.
- Q. Have you reported to Mr. Etlinger the last three years

when you have been Assistant Patent Counsel?

A. Yes.

Q. Did you report to him also prior to that, during your employment here at Sanders?

A. Yes.

Q. Have you reported to anybody else during that time?

A. No.

Q. Do you know whether a subpoena was served on Sanders Associates in connection with this deposition?

A. Yes.

Q. Have you seen a copy of that subpoena?

A. Yes.

Q. I show you what appears to be a copy? Can you identify it as such? first page of this

A. I believe it is. I can't say for sure. There were so many subpoenas coming in through here in the last few days. "Demand and Return".

MR. WELSH: I would like the reporter to mark this Sanders Exhibit One.

(SANDERS EXHIBIT NUMBER ONE FOR IDENTIFICATION --

Subpoena marked and entered.)

MR. ANDERSON: Mr. Welsh, I

will state for the record that first you referred to the document you had the

reporter mark as Exhibit One as a subpoena but, in fact, the first page is entitled, "United States Marshal's Service, Process, Receipt and Return", and I am not sure if you showed that to the witness or some other document, and I will say we object to the subpoena and we think it is improper to subpoena a party and will resist any position that you may take or testimony that you may elicit that could distinguish that Notice that you did serve on Sanders Associates.

MR. WELSH: I agree with you that the first page of this document, which is a multi-page document, is the United States Marshal's Service, Process, Receipt and Return", return of service by the United States Marshal, and it is that page of the return which is attached to a copy of the subpoena, which the reporter has marked as the exhibit.

Q (By Mr. Welsh) Do you know when the subpoena was served, Mr. Seligman?

A I don't remember which date.

Q It bears a date of service, November 12, 1975. Do you have any reason to believe it was any date other than this?

A It was in that area.

Q When did you first see the subpoena?

A When the Deputy Marshal came into Sanders.

Q Could you describe the circumstances when the Deputy Marshal came into Sanders?

A Yes. We received a call that he was down at the reception desk and we sent, I don't know if we personally went down there or sent, somebody to pick him up and bring him to our offices.

Q When you say "we", who do you mean by "we"?

A Mr. Etlinger and myself. We talked to him for a minute or so and then, I believe, Mr. Etlinger brought him to the office of Mr. Chisholm.

Q You did not go with them?

A I did not.

Q Did Mr. Etlinger return from the office of Mr. Chisholm with the subpoena or any other subpoenas?

A I think he did.

Q Do you know what was done with this subpoena or the other subpoenas?

MR. ANDERSON: I object to the question and the alternative. I think you should be specific and singular in your question. There were no other subpoenas identified.

Q. (By Mr. Welsh) Were there other subpoenas than this one brought by the Marshal?

A. Yes.

Q. Do you know what subpoenas those are?

A. A number of subpoenas directed to employees of Sanders Associates and to other people.

Q. Do you know what was done with this subpoena, a copy which has been marked as Exhibit One?

A. No.

Q. Did you bring a copy of it with you?

A. Yes.

Q. Where did you obtain the copy?

A. My secretary had a file, I believe, containing the subpoena.

Q. You mean the subpoena that the Marshal served?

A. I can't be sure whether it was the original or a copy, but I made a copy of what she had in her file.

Q. Do you know how that copy got into her file?

MR. ANDERSON: Mr. Welsh, can

we stipulate that the subpoena you're referring to which is attached to Exhibit One was, in fact, served on Sanders Associates? Would that short-cut it?

MR. WELSH: Yes.

MR. ANDERSON: We'll so stipulate.

MR. WELSH: Thank you.

Q. (By Mr. Welsh) With regard to the other subpoenas that the Marshal had, were they all served at the same time by him?

A. They were brought to our offices at the same time and within a short period of time, served on certain ones of those subpoenaed, yes.

Q. Were the witnesses called into your offices?

A. Some were.

Q. Do you remember who they were?

A. Mr. Etlinger, Mr. Chisholm, Mr. Campman, I can't recall if anyone else was.

Q. Did you receive a subpoena?

A. Yes.

Q. How did you receive it? What were the circumstances under which you received yours?

MR. ANDERSON: I object to this question and line of questioning as outside of Rule 30-B-6.

MR. WELSH: I would like to expedite this as much as possible.

MR. ANDERSON: It also seems irrelevant at this time, anything that has been noticed for this witness.

MR. WELSH: I thought as long as we were on the subpoenas, I would take care of his at this time, but I can pick it up later.

Q (By Mr. Welsh) Did you also see the Notices or copies of Notices of taking this deposition of Sanders Associates?

A Can I take a look at it? It looks familiar.

Q You were just handed a copy of the Notice in the Illinois case. Here is a copy of the Notice in the New York case, and I ask you if you saw that.

A I may or may not have. It is tough to recall. I certainly have seen attachment A and I can't remember which Notice I saw. I may have seen all of them or may not. The A attachment, of course, is very familiar.

Q Why is it familiar?

A I have seen it a number of times, I guess.

Q What is attachment A?

A That is the number of various documents to be produced.

Q Is that also an attachment to the subpoena?

A I believe so.

Q Did you have anything to do with attachment A on behalf of Sanders Associates?

A I have participated in the gathering of documents and files.

Q How did you happen to come to do that?

A Because I had prepared and written most of the patent applications regarding subject matter and probably knew most of the documents which were available, particularly those in the patent department.

Q Were you assigned a specific task of gathering the documents and things listed in attachment A?

A Many of the documents, in fact, most of the documents I was assigned the task of gathering them in preparation for the Interrogatories served on Sanders.

Q When was that?

A I don't think I could come up with a date, but when the earliest Interrogatories were served in the case,

Interrogatories, in order to assist our counsel in preparing the answers, we gathered all the documents that were pertinent to this matter.

Q You say "we gathered", who do you mean by "we"?

A I was assisted by, primarily by Ralph Baer and my secretary, Marcella St.Dennis.

Q You said for "our counsel", who did you mean by "our counsel"?

A I was gathering the information to supply to Mr. Williams, originally at Sanders?

Q Who assigned you that task?

A Mr. Etlinger.

Q Do you recall what you looked for at that time?

A I would say everything that pertained to T.V. Gaming that we could find.

Q Where did you look for those items?

A Much of the information came out of the files of the patent department at Sanders. A substantial amount of it was obtained from the inventors. Some was obtained from our independent research office. I would say those were the primary sources of information.

Q Were there any other sources?

A At the time of the Interrogatories, I can't recall any.

Q You say you obtained substantial amounts from the inventors. Would you name the inventors who you meant?

A Mr. Baer, Mr. Rusch and Mr. Harrison.

Q Were those personal files kept by them?

A There were files that they kept, yes.

Q Did they keep them here at Sanders?

A To the best of my knowledge.

Q Did you ask for any item from them which they might have kept personally at home?

A I think we did. I can't be sure, but I think we asked them for everything they had regarding this matter.

Q You referred to the independent research office. What is that?

A That is a group within the company that privately funds projects carried out in the company.

Q Under what department is that?

A I don't know the exact title of the department.

Q Do you know who would know?

A Yes, the head of the department.

Q The head of the independent research office?

A Right.

Q Do you know who that is?

A Mr. Campman.

Q. Do you know how long he has headed that department?

A. No.

Q. Subsequent to the time when you made a search for materials in connection with the earliest Interrogatories in this litigation, did you make any further search for materials relating to the subject matter of the patent in suit?

A. Yes.

Q. When was the next time you made such a search?

A. We gathered many documents in response to the latest requests.

Q. Do you know when that was?

A. Within the last week or so; and, if so,

Q. Was there a request prior to that time for documents and things from Sanders?

A. I don't recall.

Q. So that from the time of the earliest Interrogatories, you made no further search until a week or so ago in connection with this? You know, the

A. A week or so ago, that is probably hard to say. Every time Interrogatories were presented, I am sure that we possibly had to do some further searching to provide information for answering these Interrogatories.

Q. Do you recall any request for documents as distinguished

from Interrogatories?

A. Yes. There have been a number of those that we have been given.

Q. Do you remember any requests by Midway?

A. I would be hard put to remember exactly who a particular document --- I know we had a number of requests for production of documents.

Q. I see you have before you a document entitled, "Plaintiff's responses to Defendant Midway's Request for Production"?

A. Right.

Q. Does that help refresh your recollection as to whether Midway made a request and, if so, when they made it? Places where you ought to

A. I just can't recall a particular document asking production of documents from Midway. The particular document, I can't remember. I know we complied with a number of such requests, but I can't remember any particular one that, you know, that I actually, really remember seeing Midway on.

Q. When such requests were received, were you given the task of responding to the requests, by that I mean searching for documents?

A. Yes.

- 78 Q Did you discuss the items identified in the requests with anyone?
- A Yes, I am sure I discussed it.
- 79 Q With whom would you have such discussions?
- A With Mr. Baer, Mr. Etlinger and Mr. Williams.
- 80 Q Was each such request discussed with all of those people?
- A No, you know who is at the office.
- 1 Q Was the request referred to in the papers before you discussed with all those people?
- A I can't say we looked at some papers.
- 2 Q In your discussions with Mr. Baer and Mr. Etlinger and Mr. Williams regarding the requests, did you refer to places where you ought to search for documents?
- A I would think so, yes.
- 3 Q Who would be the ones that you would have discussed that with, at least?
- A Certainly Mr. Baer, because he was helping me to locate documents; perhaps with Mr. Williams and Mr. Etlinger, also.
- Q Did you discuss the possibility of looking for documents in places other than the patent department, the files of the inventors and the independent research office?

A. I can't recall the particulars, but I believe we discussed some other possible places and I believe there were some phone calls made but I just don't recall the details. Those were the areas that we expected to find documents in.

Q. Do you recall any of the other possible places?

A. No.

Q. Do you know who would know what places were discussed?

A. Let me back up a little bit. There was another place that we looked at some laboratory notebook not belonging to any of these parties as possible sources of information. We had discussions about it.

Q. When you say "laboratory notebook not belonging to any of these parties" --

A. The people I mentioned, the patent department, independent research office, inventors. I did order some laboratory notebooks of, I believe, a technician, I believe, working on the program.

Q. What was his name?

A. David Batchelder.

(Discussion off the record.)

Q. (By Mr. Welsh) Do you recall any other places which you searched or discussed the possibilities of

searching in your discussions which included Mr. Baer and Mr. Etlinger?

MR. ANDERSON: I think I object.

I think you're mischaracterizing his testimony, previous testimony to with whom he discussed searching and when.

WITNESS: Maybe you ought to restate that.

Q (By Mr. Welsh) You stated that you had discussions with some persons regarding other possible places of searching than the patent files, the files of the inventors and the independent research office. With whom did you have such discussions about other possible places?

A Well, Mr. Williams, Mr. Etlinger and Mr. Baer. We discussed, I think we tried to think of other possible places at that time when the first Interrogatories were served on us, and, to the best of my knowledge, I can't -- I think we picked those places, we couldn't think of any other places that should have any other documents.

Q Did you discuss other possible places at any time other than at the time when you received the earliest Interrogatories?

- A. Yes.
- Q. When was that?
- A. Yesterday.
- Q. What other places did you discuss yesterday?
- A. Where our computer people work.
- Q. What do you mean by "computer people"?
- A. Programming types.
- Q. Is there a particular department involved?
- A. I believe it is called computer sciences; I am not sure of the title.
- Q. Do you know who would know the title of that?
- A. Mr. Frisbee.
- Q. Who is he?
- A. He works there.
- Q. Do you know his first name?
- A. Joe.
- Q. Do you know who he reports to?
- A. No.
- Q. Is Mr. Frisbee in charge of the department?
- A. I don't believe so.
- Q. Do you know who is in charge?
- A. No.
- Q. Do you recall who suggested this as a possible place of search?

- A. Possibly Mr. Etlinger.
- Q. Do you recall how it came up?
- A. Yes. We had a copy of a Spacewar tape and our attorneys thought that we ought to look into this matter further.
- Q. What is a Spacewar tape?
- A. Well, this copy is a punch tape that says Spacewar on it.
- Q. You say you had a copy of a Spacewar tape?
- A. Yes.
- Q. What is Spacewar?
- MR. ANDERSON: If you know.
- A. I have seen a game programmed on a PDP 11 computer which was identified by someone who told me that it was called Spacewar.
- Q. When did that occur?
- A. Within the last maybe month or six weeks, something like that.
- Q. Where did it occur?
- A. At Sanders, at this building.
- Q. Where in this building?
- A. I believe in a room on the third floor.
- Q. Is that room occupied by any particular department?
- A. I don't know what department occupies it. It is

occupied, yes.

Q. Is that the Computer Science Department?

A. I don't know.

Q. Do you know where the Computer Science Department is?

A. Yes.

Q. Where?

A. At least some of it, I believe, is in the basement of this building or one of the attachments to it.

Q. Where did you obtain the Spacewar tape to which you referred?

A. From John Sauter.

Q. When did you obtain it from Mr. Sauter?

A. It was on a date, I believe a few days after he had left the employ of Sanders.

Q. When did he leave Sanders' employ?

A. Sometime in October of this year.

Q. Do you know where he's located now?

A. At Digital Equipment Corporation.

Q. Where are they located?

A. Maynard, Mass.

Q. How did you happen to obtain the tape from Mr. Sauter?

MR. ANDERSON: I object for
a lack of a foundation.

MR. WELSH: He said he obtained

the tape from him and I asked how he happened to do it.

MR. ANDERSON: I don't think he stated that he personally did. I think you might establish that first.

MR. WELSH: I thought we had.

Q. (By Mr. Welsh). Did you obtain the tape from Mr. Sauter?

A. Specifically, no. MR. ANDERSON: By him, you mean him personally?

To the general way MR. WELSH: Yes.

A. I personally did not.

Q. (By Mr. Welsh) Do you know who did?

A. Someone from our office.

Q. Do you know who it was? tended to ask Mr. Sauter for it.

A. Perhaps Mr. Etlinger, perhaps his secretary, I can't say for sure.

Q. When did you first see the tape?

A. The day that we obtained it, the day it was obtained by the Patent Department.

Q. Do you know where the tape had been before it was obtained by the Patent Department?

A. No. All I know is that Mr. Sauter gave it to us. I don't know where it was.

Q. Do you know why the tape was obtained?

- A I believe Mr. Etlinger asked him for it.
- Q Do you know why Mr. Etlinger asked him for it?
- MR. ANDERSON: I object to the question as vague and ambiguous. I don't mind if you ask Mr. Seligman if anyone told him. I don't think he should --
- Q (By Mr. Welsh) Did Mr. Etlinger tell you?
- A Not specifically, no.
- Q Generally?
- A In just a general way we learned that Spacewar was being instituted by the Defendants in this action and of general interest that if such a tape existed, we wanted a copy.
- Q Do you know how he happened to ask Mr. Sauter for the tape?
- A I think Mr. Sauter volunteered the fact that he had a tape.
- Q Did Mr. Etlinger have some conversation with Mr. Sauter that you know of?
- A Yes.
- Q When did that take place?
- A Just prior to Mr. Sauter's leaving the company.
- Q Where did it take place?
- A In the Patent Department office.

- Q. Were you present when it took place?
- A. I was present at times when they talked, yes, or, at least, for a part of a conversation. I can't say whether entire conversations.
- Q. Would you relate the portions of the conversation where you were present?
- A. I think that we mainly talked about, somewhat about Sauter's relationship to Spacewar and the fact that he had put it up on a computer at Sanders and some of the relationships with respect to kinds of games that are the subject of said patents versus Spacewar and Mr. Sauter expressed his opinion that he would have liked to have gotten into the game business, but he certainly couldn't imagine how you could do anything with Spacewar to make it inexpensive enough to be available for any commercial endeavor.
- Q. Where did Mr. Sauter work at Sanders?
- A. I believe he's a programmer, but I don't know where he works.
- Q. I believe you said that he didn't work here anymore.
- A. Oh, you mean now. I don't know. He was a programmer in this building.
- Q. Do you know how long he worked here?
- A. No.

Q. You stated he put Spacewar on a computer at Sanders.
Do you know what computer?

MR. ANDERSON: I think he testified to that already.

MR. WELSH: He said he didn't know where he worked, but he didn't say he didn't know what computer he put it on.

MR. ANDERSON: He did mention a computer but maybe not in that context.

WITNESS: He showed it to me on a PDP 11 or to us.

Q. (By Mr. Welsh) Is that the same one that you referred to earlier?

A. Yes.

Q. Was that the same occasion you referred to earlier?

A. I don't recall what I said earlier, what occasion.

I have seen it two or three times on the PDP 11.

Q. It was all about the same time, or six weeks, two months ago, in that kind of period?

A. I don't remember exactly.

Q. Was he present during all the times when you saw it?

A. I don't believe so.

Q. But he was present on one occasion?

- A. Yes.
- Q. Was it the occasion when he came to the Patent Department office?
- A. No.
- Q. When was it?
- A. I believe it was the first time we saw Spacewar or I saw Spacewar, I believe he was present.
- Q. You say that was a month to six months ago?
- A. Two months ago, somewhere in that period. I can't recall the exact dates.
- Q. You stated that when Mr. Sauter was present in the Patent Department offices you discussed relationships with respect to the kinds of games that were the subject of patents in suit versus Spacewar. Could you be more specific as to what was discussed in that regard?
- A. I think he just expressed his opinion that if it was possible, he would have liked to have gotten into the commercial game business. He was very enamored with computer games, but he couldn't see how they could be adapted to commercial games.
- Q. Did you discuss how the games were played?
- A. I don't believe so.
- Q. Approximately how long was Mr. Sauter in the Patent

Department on that occasion of his conference with you and Mr. Etlinger?

- A. Maybe a half an hour, maybe less.
- Q. Did you discuss the tape you referred to at that time?
- A. I don't know.
- Q. Do you know when Mr. Etlinger requested the tape?
- A. It was during that period of time.
- Q. What do you mean by "that period of time"?
- A. When we were talking to Sauter.
- Q. In your office?
- A. Yes. ... in the PPP 11 program.
- Q. In the Patent Department offices?
- A. Yes.
- Q. Did he tell Mr. Sauter why he wanted the tape?

MR. ANDERSON: By "he", you

mean Mr. Etlinger?

- Q. (By Mr. Welsh) Yes.
- A. If he did, I don't recall.
- Q. Has anything been done with the tape since it was received in the Patent Department office?
- A. We have shown it to Mr. Williams and Mr. Anderson yesterday.
- Q. Do you know what the tape is intended to be used for, that is, the tape that you have been referring to?

- A. No.
- Q. Do you know whether it is to be used in connection with a computer?
- A. I can't say, I know that, I know it is a punch tape.
- Q. Do you know whether it was to be used on a particular computer?
- A. Again I can't say I know that.
- Q. Do you know the form of the Spacewar program for the PDP 11 that you observed?
- A. Other than Mr. Sauter also gave us a print-out which I believe is the PDP 11 program.
- Q. Do you know whether the print-out has any relation to the tape?
- A. I don't know.
- Q. Did he say when he made the print-out?
- A. I don't know if he said when he made it. I believe there are some dates on the print-out.
- Q. It was received in the Patent Department, I take it?
- A. Yes.
- Q. When was it received?
- A. There is a date on the print-out which says October something. I can't say which day in October.
- Q. Did you bring the print-out with you?
- A. Yes.

MR. WELSH: Will you produce it at this time?

MR. ANDERSON: We will hand you three items which I think go together: a print-out and a tape and a note which I understand is related to them.

Q (By Mr. Welsh) Your counsel has now furnished me with what is the print-out, a tape and a note attached to the tape by a paper clip.

MR. WELSH: May we mark these?

MR. ANDERSON: Yes, you may provided we have our usual stipulation which, I think, is in accordance with Federal Rules and we will retain the originals in the case. I would hesitate to try to provide you with copies but will make them accessible to you at any time, and if you want copies, we'll work with you and try to get you copies.

MR. WELSH: Where will they be accessible?

MR. ANDERSON: We are reasonably adaptable and will make them available. We'll make these available,

these specific ones, because they're difficult to copy. I don't want to make that same stipulation with respect to the paper. That is copyable, and I think they should stay here at Sanders and the mass of material that we are producing.

MR. WELSH: I would like to ask the reporter to mark this multisheet computer read-out on the first page as Sanders Exhibit Two.

(SANDERS EXHIBIT NUMBER TWO FOR IDENTIFICATION -- Computer read-out marked and entered.)

MR. WELSH: I would like to have you mark this tape which bears the legend Spacewar 3.1 dup 31-August-'71 as Sanders Exhibit Three and this note bearing a legend phone-o-gram with the date 10-15 and the message, "John Sauter dropped off the tapes," as Exhibit Four.

(SANDERS EXHIBIT NUMBER THREE FOR IDENTIFICATION -- Tape Spacewar 3.1 dup. 31-August-71 marked and entered.)

SANDERS EXHIBIT NUMBER FOUR FOR IDENTIFICATION -- Phone-o-gram marked and entered.)

(A luncheon recess was taken.)

AFTERNOON SESSION

(The deposition continued with all parties present.)

Q (By Mr. Welsh) Just before we recessed for lunch, Mr. Seligman, the reporter marked some of these things which you have produced as exhibits two, three and four. Referring to Exhibit Two, can you tell us what that is, please?

A It looks like a print-out of some kind.

Q Do you know where that came from?

A From John Sauter.

Q Where did it come from to be produced here today?

MR. ANDERSON: We'll stipulate, if you want to, Exhibit Two is the print-out that he testified about this morning.

MR. WELSH: That John Sauter had -- I don't recall --

MR. ANDERSON: That John Sauter delivered here or had delivered here.

WITNESS: I don't know if I

testified about that one.

MR. WELSH: I don't recall about this. I think it was the tape.

MR. ANDERSON: Excuse me, I thought he mentioned a print-out.

WITNESS: John Sauter brought it up to us.

Q. (By Mr. Welsh) At the time you had the meeting at the Patent Department?

A. In that time frame, earlier or later, but in that time frame.

Q. Was he there more than once?

A. I don't recall.

Q. I see some handwriting in the upper right-hand corner of that first page. Do you recognize the handwriting or know who put it there?

A. Yes.

Q. Whose is it?

A. Mr. ~~Rutledge~~. Etlinger

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Q. What does it say?

A. Received October 10, 1975.

Q. Did you see Mr. Sauter deliver that read-out? Were you present?

A. I don't recall whether I did or not.

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Q Do you know what program is represented by that read-out?

A I don't know.

Q Were you told by anyone?

A Yes.

Q By whom were you told?

A Mr. Sauter.

Q What did he say it was?

A I believe he said that was the print-out of Spacewar on the PDP 11.

Q Did he say where the PDP 11 was located?

MR. ANDERSON: Objection.

What PDP 11?

MR. WELSH: The one he referred to in his previous answer.

MR. ANDERSON: There may be hundreds of thousands of PDP 11's. I didn't know he was referring to a specific PDP 11.

MR. WELSH: He said the particular PDP 11, indicating a particular one.

MR. ANDERSON: I've heard of PDP 1 or PDP 2, and PDP 10.

- Q (By Mr. Welsh) Did he indicate which PDP 11 computer this was programmed for?
- A I don't know if he did or not.
- Q What did he say about it?
- A I guess the one that is programmed that they're using or he said used or he said he used.
- Q Here at Sanders?
- A I believe so.
- Q Did he say when he obtained the print-out?
- A He didn't.
- Q Did he make any other statements with respect to what this program is?
- A Yes. He said it was a program for Spacewar for use with a Sanders display.
- Q A PDP 11?
- A Yes. He said this was for a Sanders display with a PDP 11.
- Q What do you mean by "display"?
- A The output device connected to the PDP 11 to display graphics from the computer.
- Q How does the output device display the graphics?

MR. ANDERSON: Object. What output device? What graphics? There is a lack of foundation, and I think it is

outside of the scope of 30-B-6 scope or
Notice of Depositions completely.

MR. WELSH: I am trying simply
to determine the background of this
document which has been produced, what the
computer is intended for and so forth. I
think the question is proper.

Q (By Mr. Welsh) You referred to a Sanders device
connected to the PDP 11 to display graphics from the
computer?

A Yes. It has a cathode ray tube and circuitry.

Q What did you mean, device of Sanders Manufacturer?

A Yes. The internal works is off it to an

Q Is Sanders in the business of manufacturing such
display devices?

A Yes.

Q Are you familiar with such devices that are
manufactured by Sanders?

A Not intimately.

Q Are you familiar with them at all?

A Yes.

Q Do you know how long Sanders has been in the business
of manufacturing such devices?

MR. ANDERSON: I object. I

think this is clearly outside of the scope of the 30-B-6 Notice.

Q (By Mr. Welsh) What device of Sanders were you referring to as connected to the PDP 11 for displaying graphics of this program represented by Exhibit Two?

A I think it is what we called an ADDS-500 or some ADD series. I'm sure there is a series of, I think it is 500.

Q What does a display consist of?

A I have never looked at any circuit diagram or read any manuals. It has a cathode ray tube and circuitry to deflect a beam, I guess, to write on it. I don't know the internal workings of it to any great detail.

Q When you say "deflect a beam to write on it", what do you mean by it?

A On the cathode ray tube screen.

Q Did Mr. Sauter say whether this was a program currently being used on the PDP 11 at the time he delivered it?

A I understood that to be the case.

Q Did he say how long this program had been used on the PDP 11 that he referred to?

A I don't recall.

Q Did he give you any idea?

A. I don't recall.

Q. Did that come up in the discussion with him and Mr. Etlinger?

A. It may have. I don't recall any discussion regarding that, but it may have come up and I just don't remember it.

Q. Did he say where this program originated?

A. I believe he wrote it.

Q. Did he say when he wrote it?

A. I don't recall.

Q. Do you know how long Mr. Sauter worked for Sanders?

A. No.

Q. Do you know the circumstances under which Mr. Sauter's employment with Sanders was terminated?

MR. ANDERSON: I object only on jaggedness. What do you mean by the circumstances?

MR. WELSH: Why did he leave?

MR. ANDERSON: I object to any speculation as to what was in Mr. Sauter's mind.

Q. (By Mr. Welsh) Do you know whether Mr. Sauter was discharged or whether he left the company voluntarily?

A. Yes, he left voluntarily.

Q I hand you now what is marked as Exhibit Three and ask if you would identify that, please?

A Yes, it was brought, I think I testified earlier, that either Mr. Etlinger or his secretary received that. I believe there was a note with the specific details.

Q I show you what has been marked Exhibit Four. Is that the note that was clipped to Exhibit Three? Could you identify Exhibit Four?

A Yes. That is the note that states that Mr. Sauter dropped off Exhibit Three, the tape, on October 15th.

Q Of this year?

A Yes. That is that correct?

Q Is that the tape about which you testified earlier?

A Yes.

Q Do you recognize the handwriting on the note?

A The initials look familiar.

Q Whose initials are they?

A Mr. Etlinger's secretary.

Q What is her name?

A Lynn, I can't remember her last name.

Q Do you recognize the handwriting as hers?

A No, I wouldn't be able to.

Eileen

Q Does the name Blaine appear?

misspelling Blaine

2/23/78

A. Yes.

Q. Who is Eileen, if you know?

A. I assume it is the girl that would be at the reception desk downstairs in the lobby of this building.

Q. Is that the tape which Mr. Sauter actually left, do you know, or --

A. I don't know.

Q. Do you know whether any copies were made of the tape that Mr. Sauter left?

A. I don't know.

Q. The note, Exhibit Four, appears to refer to tapes in plural, is that correct?

A. That is what it says, yes.

Q. Do you know whether any other tapes were delivered with that one?

A. To the best of my knowledge, that was the only one.

Q. Did you bring with you any other punch tapes today?

A. Yes.

MR. ANDERSON: We have provided one other punch tape for you this morning.

Q. (By Mr. Welsh) Can you tell us what that punch tape is?

misspelling RJS/bk
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A. No.

Q. Do you know where it came from?

A. Yes.

Q. Where did it come from?

A. Mr. Frisbee gave it to us.

MR. WELSH: I would like to have this tape marked as Exhibit Five, and ask the reporter to mark this second tape as Exhibit Five.

(SANDERS EXHIBIT NUMBER FIVE FOR IDENTIFICATION --

Punch tape marked and entered.)

Q. (By Mr. Welsh) You said that Mr. Frisbee was associated with your Computer Sciences Department?

A. Yes. I know why he brought

Q. You don't know whether he's head of that department or not? I think we learned that

A. I don't think he is.

Q. When you say Mr. Frisbee gave "us" this tape, who do you mean by "us"?

A. Well, I don't know who he actually handed it to.

Q. Mr. Etlinger and your attorneys were in the room at the time?

A. I believe.

Q. When was that?

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- A. This morning.
- Q. This morning, approximately what time?
- A. Before ten o'clock.
- Q. And after what hour?
- A. I would say after 8:30.
- Q. Who was present when he presented the tape?
- A. I have already said, I believe, Mr. Etlinger and
Mr. Williams and Mr. Anderson, and I am not sure if
anyone else was in the room or not.
- Q. Were you there?
- A. Yes.
- Q. Did anyone request him to bring that tape? 2/22
- A. No. think to that effect available or
- Q. Do you know why he brought the tape?
- A. Yes. I think in the continuing searching for documents
it was, I think we learned that Mr. Frisbee might have
something that should be presented today.
- Q. When did you learn that?
- A. This morning.
- Q. How did you learn it?
- A. I am not sure if it was this morning or last night.
We made a phone call to him to see what he knew
about Spacewar.
- Q. Who made the phone call?

- A. I think it was Mr. Etlinger.
- Q. Were you present?
- A. Yes, I believe so.
- Q. What did he say?
- A. I couldn't hear the other end of the conversation.
- Q. What did Mr. Etlinger say?
- A. They were talking about, had Frisbee seen Spacewar and I guess he asked him if John Sauter worked for him.
- Q. Do you know what answer he got to that question?
- A. Yes, Sauter did work for Frisbee.
- Q. What else did Mr. Etlinger say?
- A. I think he asked him if Sanders had a PDP ~~11~~¹ or something to that effect available or --
- Q. Do you know the answer he got to that question?
- A. That we did have one.
- Q. Did he ask where it was located?
- A. I can't recall.
- Q. Do you know where it is located?
- A. No.
- Q. Have you been told where it is located?
- A. Yes, not definitely. It is in with a lot of junk or it is not being used. It is a junk room of some kind.
- Q. Do you know what location?
- A. No.

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must transcribed 2/23/76

A. No.

Q. You referred earlier several times to this building. What do you mean by this building?

A. Well, I think most of the time I meant the tower, the present tower structure that goes up 7 stories, and at times I may have meant the two additions on either side. I think at one time I referred to it as a separate building.

Q. Then by "this building", do you mean the actual building we are in now?

A. Yes, I think so.

Q. This 7-story building?

A. Yes, maybe included the 2-story additions on either side and they're all interconnected and effectively one building.

Q. Does Sanders Associates have other buildings?

A. Yes.

Q. Where are they located?

A. They have another one in Nashua at Canal Street and they have one at Simon ~~Street~~ in Nashua and they have one in Merrimack, New Hampshire. They have buildings in Manchester, New Hampshire.

Q. So you don't know whether the PDP 11 of Sanders is located here in this building?

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misspelled 2/23/76

- A. I don't know.
- Q. Do you know who would know?
- A. Mr. Frisbee.
- Q. Did Mr. Etlinger say or ask anything else in this conversation with Mr. Frisbee last night?
- A. They discussed when Sauter worked here.
- Q. You mean how long he worked here?
- A. Yes.
- Q. Do you know what the answer or what period of time came out of that discussion?
- A. Let's see. I think Frisbee told him 1969 he came to work.
- Q. Did he say whether Sauter worked for him that whole time?
- A. Yes, he said that he did.
- Q. What else was said or asked by Mr. Etlinger in the conversation?
- A. Specifically, I don't know that I recall. I think he did ask a little history of the PDP ~~X1~~ at Sanders.
- Q. Did he say what he was told in that regard?
- A. Yes. I think Frisbee said that he thought it came here about 1970.
- Q. Did he state where it came from?
- A. I think he said he thought it came from another

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2/23/76

mistranscribed (R15
2/23/76)

location.

Q Of Sanders?

A Yes.

Q Did Mr. Etlinger ask or say anything else during his conversation with Mr. Frisbee?

A Yes. I think they discussed another Sanders employee who was in the computer group.

Q Who was that?

A Mr. Mairson.

Q What was said about Mr. Mairson?

A That he had headed up some computer group at our Bedford facility.

Q What did he have to do with the discussion regarding Spacewar?

MR. ANDERSON: I object. I think we're getting off the track of the 30-B-6 Notice of Depositions.

MR. WELSH: I'm still trying to find out -- this tape apparently came from Mr. Frisbee and trying to find out the circumstances surrounding its coming.

MR. ANDERSON: I continue my objection. I don't think this line of questioning is directed to either the

tape or Mr. Frisbee.

A I think they were trying to ascertain where the PDP 11 was prior to coming to this facility, this building.

Q (By Mr. Welsh) Did they determine that it had been in Bedford?

A Did they?

Q Mr. Frisbee and Mr. Etlinger.

A Eventually.

Q What did Mr. Mairson have to do with that?

A His group or he bought a PDP ~~11~~ at Bedford.

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Q Mr. Mairson's group?

A Yes.

Q From whom in Bedford did they buy it?

MR. ANDERSON: I object. I don't think that the testimony was that they bought it from somebody at Bedford. The Bedford group bought it from somebody.

Q (By Mr. Welsh) I'm sorry. Mr. Mairson is located at Bedford?

A Was.

Q Where is he now?

A Here, this facility.

Q What is his first name?

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A. Ted.

Q. What is located at Bedford, where the PDP ~~11~~ came from? R15
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A. It is a Sanders building which we're no longer using.

Q. It is another Sanders building?

A. Yes.

Q. Other than the ones that were mentioned?

A. Yes. I think we still own it. I am not sure.

Q. It is at Bedford, Mass.?

A. Yes.

MR. ANDERSON: To expedite things for clarity, it is my understanding that there is no Sanders facility operating now in Bedford, if that will help, and Mr. Seligman said he thinks we still own the facility or something to that effect.

Q. (By Mr. Welsh) I still don't understand. You say Mr. Mairson headed up a computer group that purchased the PDP ~~11~~ at Bedford? R15
2/23/76

A. No. He purchased it while he was at Bedford. That was his office. That's where he worked.

Q. For Sanders?

A. Yes, for Sanders.

Q. When was that?

A. Let's see --

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MR. ANDERSON: If you know.

A. I just can't recall the date.

Q. (By Mr. Welsh) That didn't come out in the discussion?

A. Yes, it did.

Q. What date came out?

A. I can't recall it.

Q. I believe you stated earlier that the PDP 1
came to Sanders about 1970.

MR. ANDERSON: I object to

that. I don't think that is what he said.

Q. (By Mr. Welsh) Could you correct my statement then?

A. I believe we were told by Mr. Frisbee that he thought
it came to this facility around 1970.

Q. By this facility, you mean the one here in Nashua,
this building?

A. Yes.

Q. Do you know how long Mr. Mairson has been here at this
facility?

A. No.

Q. Do you know how long there has not been an operating
group at the Bedford facility?

A. It has been a few years. I don't recall the exact
amount of time.

Q. Do you know what group was there when it was operating

as a Sanders facility?

A. Primarily our radar people, our FUSE people.

Q. Referring again to Mr. Etlinger's conversation with Mr. Frisbee last night, what else was said or asked?

A. There was nothing that particularly comes to mind.

Let me think. I think they discussed who he had worked for when he came to work here, who Mr. Sauter worked for, I guess.

Q. What was he told?

A. Mr. Lemire.

Q. And what group was he with?

A. I don't know.

Q. I may be wrong but I thought I understood before that you said Mr. Sauter worked for Mr. Frisbee.

A. I think that I said that he worked for Mr. Frisbee at some time, but I think before he worked for Mr. Frisbee, he worked for Mr. Lemire. That is the way I recall it. I think when he came to work here, he worked for Mr. Lemire and later worked for Mr. Frisbee.

Q. Is the computer group of which Mr. Frisbee is a part in the Electronic Countermeasures Division?

A. No. I don't think so.

Q. How about that group that was at Bedford? Was that

a part of an Electronic Countermeasures Division?

A. No.

Q. In the discussions with Mr. Etlinger with Mr. Frisbee, was it indicated how long Mr. Sauter worked for Mr. Lemire?

A. I don't believe so... If it was, I don't recall.

Q. Was anything else said or asked by Mr. Etlinger during the conversation with Mr. Frisbee last night?

A. I don't recall anything.

Q. Was anything said about punch tapes for Spacewar?

A. I don't recall.

Q. Did Mr. Etlinger ask Mr. Frisbee to make a search for any documents or things such as punch tapes relating to Spacewar?

A. Yes.

Q. What did Mr. Etlinger say?

A. If he had any, I am not -- I believe he said if he had any records or documents about Spacewar, I don't know the details of what he said but --

Q. What did Mr. Frisbee answer?

MR. ANDERSON: I object. The witness has testified he only heard one end of the conversation.

Q. (By Mr. Welsh) Were you told?

A. I guess he said he would look for the thing.

Q. Did he later produce something?

A. Yes.

Q. What did he produce?

A. Exhibit Five.

Q. I believe you were present when he produced that?

A. Yes.

Q. That was this morning?

A. Yes.

Q. What did he say when he produced it?

A. Well, that he went looking and he quickly found this tape.

Q. Did he describe what it was?

A. He identified it as Spacewar.

Q. Did he say where he found it?

A. Yes, in his junk room, which I referred to earlier.

Q. Where the PDP ~~11~~ is now located?

A. Yes, where he said it was located.

Q. Did he say whether that was in this building or not?

A. I don't recall.

Q. Did he say where he found it in the junk room?

A. With the PDP ~~11~~.

Q. Did he state how it was associated with the PDP ~~11~~ in the junk room?

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- A. I think he said there were some tapes on a desk or
on the top of it or something like that and I didn't
pay much attention to exactly where on the PDP 11 or *R15* *2/26/76*
exactly how close to it, but it was with the PDP 11. *R15*
2/26/76
- Q. Did he say how the tape happened to get there?
- A. No.
- Q. Did he state how he identified it as the Spacewar
tape?
- A. I think he read the punched out ~~alphnumerics~~. *R15* *2/26/76*
- Q. Did you read those?
- A. I read one of them. I can't recall if I read this
one...
- Q. Could you take the rubber band off and read it to us?
- A. Spacewar 3.1 copy 9 Fe-- after the Fe something 8,
I don't know, I can't make out -- Feb. 68.
- Q. So it reads Spacewar 3.1, copy 9, February '68, is
that correct?
- A. Yes.
- Q. Did Mr. Frisbee say anything else about Spacewar this
morning when he delivered the tape?
- A. I think, I believe he'd been asked if he played it and
I think he answered that he didn't.
- Q. That he hadn't?
- A. That he hadn't.

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Q You were there, were you not?

A Yes, but I am not sure. I was in and out while some of this talking was going on.

Q Now returning to the places where you stated that you had searched in response first, to the earliest Interrogatories that had been asked of Sanders in this case and later, when there was a request for the production of documents, you stated that another possible place, that is, in addition to the Patent Department files, the files of the inventors and the Independent Research Office, that you considered laboratory notebooks of others and you named a Mr. David Batchelder?

A That is correct.

Q Did you actually examine the notebooks?

A Yes.

Q Did you include those among the documents that are produced here?

A No.

Q Why did you exclude that?

A Because there's nothing pertinent in the notebooks.

Q They contain no reference --

A No reference to any work I believe done at all on it.

Q Is he still employed here?

A. Yes.

Q. Is there a practice with respect to the keeping of notebooks by such persons as Mr. Batchelder?

A. Practice?

Q. Yes.

MR. ANDERSON: I object to the question. The question is vague and ambiguous.

Q. (By Mr. Welsh) Is there a requirement for technicians to maintain notebooks?

A. There is a general policy that technical people should maintain notebooks. ~~the time the subpoena was sent~~

Q. He did have some notebooks, is that correct?

A. Yes.

Q. Did you ask him why he did not have notebooks relating to his work in connection with the subject matter of the patent in suit?

A. I asked him if he kept a notebook, if he kept notes of some kind and he wasn't sure. He thought he put something down in his notebook but he didn't have the notebook anymore, because he had left the company. I ordered his notebook from our storage area where we store the notebooks and looked at them myself.

Q. You say he left the company? .

A. Yes. He had left it some period of time and then come back again.

Q. I see, but his notebooks had been retained here?

A. Yes.

Q. Did you ask him if he had kept any personal notes?

A. I believe so, I think.

Q. What did he reply? MR. ANDERSON: I object.

A. I don't believe he had any information. He said if he had anything, it would be in the notebooks.

Q. Were you given copies of the Notices of Deposition, that is, were copies available at your Patent Department prior to the time the subpoena was served?

MR. ANDERSON: I object. Do you mean the 30-B-6 Notice?

MR. WELSH: Yes. I request

A. We were given copies of some depositions. I can't say if it was the 30-B-6 or not.

Q. (By Mr. Welsh) Was it a deposition of Sanders Associates?

A. I can't say that. My best recollection is that it was of individuals rather than of Sanders Associates.

Q. When you received the subpoena, did you, or were you given the task of making any further investigation?

A. Yes, we pulled together files that had not been pulled

out, that had been generated the last time documents were produced for you.

Q Did you search for any other documents?

A Other than what?

Q Other than just the files generated since the documents produced the last time for us?

MR. ANDERSON: I object. I think it is vague and ambiguous, your question. He has testified to multiple searches that he made over the period since the suit has been pending.

MR. WELSH: I didn't understand the testimony that way. I thought he made one when the earliest Interrogatories were served and another one when a request was made for documents.

MR. ANDERSON: And he testified this morning that he made various searches from time to time.

Q (By Mr. Welsh) Were any other possible places of searching considered other than the four you mentioned?

A Well, the latest searching on behalf of what Frisbee was doing for us to come up with this and I believe that, you know, some telephone calls were made to

various people within the company that may have had very loose, some minor knowledge of this, to find out if they had any information, but what we searched is every place we could think of that would have anyone who would know or have kept any documents pertaining to these T.V. games.

- Q Do you know who were the people who were called?
- A I can't recall.
- Q Who made the calls to the people?
- A I think possibly Ralph Baer made some and possibly I made some and I don't really remember. At the time it was just we thought we really had everything that was available in the company on this subject.
- Q With respect to Mr. Batchelder's notebooks, did you actually review them yourself?
- A I reviewed them. Well, I didn't
- Q Do you know whether Mr. Batchelder looked for information, also?
- A I asked him what information, if any, he had, and he said, "If I have any, it would be in my notebooks," and I got the notebooks as I have testified and there was no information.
- Q In your discussions as to where you might look for documents requested, did you consider any group of

Sanders dealing with training devices?

A. I would say no.

Q. How about Sanders graphic displays for computer terminals?

A. I personally do not recall looking into that area.

Q. Did it come up in the discussions as to a possible place to look?

A. I don't recall.

Q. These were discussions that you had with Mr. Baer, I believe?

A. Yes.

Q. Did you also include Mr. Etlinger?

A. I am sure at times.

Q. So neither the graphic displays of Sanders nor training devices were considered in those discussions?

A. Not that I can recall. I didn't look into it and I don't remember if Mr. Baer did or did not.

Q. Referring now to the attachment A which was part of a subpoena, on the deposition notices, under what category were these items which have been introduced as Exhibits Two, Three, Four and Five produced?

MR. ANDERSON: I will speak to that, Mr. Welsh, I guess, seeing we have provided them. I believe that two of

them, the tapes, Exhibits Three and Five, were produced because they bore a punched disha which we presumed was a date and, therefore, concluded that they should be produced as they might fall under paragraph 30 of your request. With respect to the print-out, Exhibit Two, I believe that we had produced that not believing that it came under any paragraph of your request, but believing that, in view of Mr. Sauter's production of that and Exhibit Three or delivery of Exhibits Two and Three together on about October 15, 1975 and because it related to Spacewar, we have included it, and it does not bear a date within the range that you asked for.

MR. WELSH: But it is related to Rule 30-B-6, I take it.

MR. ANDERSON: It certainly might be.

Q. (By Mr. Welsh) Now referring to attachment A to the subpoena on the deposition notices, did you bring documents or things as defined in paragraph one?

MR. ANDERSON: I might say, as

you start the various procedure, we responded to your request for production of documents in a document filed in the Northern District of Illinois on August 11, 1975, and that request for production of documents is, I believe, verbatim reproduced in the notice of depositions on which Mr. Seligman is answering on behalf of Sanders Associates, Inc.^t In that response we specifically stated that we had not attempted to break down the documents paragraph by paragraph but stated to the contrary "some of the paragraphs of requests are overlapping and more than one paragraph may request production of the same documents". Therefore, we have not organized them, as you know from inspecting, on a category by category basis.

MR. HERBERT: You say that you filed a response in Chicago?

MR. ANDERSON: Yes.

August 11, 1975.

MR. HERBERT: That is the response?

MR. ANDERSON: Yes.

MR. HERBERT: Do you by any chance have a copy of that?

MR. ANDERSON: You can peruse it.

MR. HERBERT: I would like to see it.

MR. ANDERSON: I am sorry, it has some notes on that that I can't even read. (They're Mr. Williams' notes,

(Discussion off the record.)

56 Q. (By Mr. Welsh). In your investigation and searching, Mr. Seligman, did you find documents relating to the assignment of rights in the alleged inventions of said patents from the named inventors and/or negotiations relating thereto?

A. Yes.

Q. Were those produced?

A. Regarding production of documents, all the documents that I gathered, I gave to Mr. Williams. He's the one that produced them in response to the request. I gathered them all.

Q. What documents did you find relating to the assignment of rights?

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- A. Assignment is generated by the particular inventors of each of the patents in question.
- 59 Q. Aren't assignments filed in the Patent Office?
- A. Yes, in the application files.

MR. ANDERSON: Is there any way we can short-cut whatever you're trying to prove about the assignments by stipulation?

MR. WELSH: I am not worried about the assignments, but trying to get to the others. I was going to ask if there were other documents that were selected in response to this paragraph one. At the record unless the witness

WITNESS: I can't say if they were selected in response to paragraph one. They were certainly selected in response to the obligation of the inventors to assign inventions to Sanders.

- Q. And what documents are those?
- A. There are patent agreements which employees of Sanders normally sign when they come to work here.
- Q. Did you obtain these documents to be produced here?
- A. I believe so.

2 Q What documents do you have specifically?

A Patent agreements of Mr. Rusch, Mr. Baer,
Mr. Harrison.

MR. WELSH: I would like the reporter to mark these as Exhibit Six, the agreement of Mr. Baer, Exhibit Seven, the agreement of Mr. Rusch and Exhibit Eight, the agreement of Mr. Harrison.

MR. ANDERSON: I object to identifying. Let's have the witness testify further about them. I see no relevance or materiality at all to the documents and no reason to make them a part of the record unless the witness testifies further about them.

MR. WELSH: I expect to ask the individual inventors about them and thought it would be appropriate to mark them at this time.

MR. ANDERSON: I don't see any relevance to them or why you would ask the inventors about them unless there is a challenge of the propriety of the assignments that you have from the

inventor to Sanders Associates, Inc.

MR. WELSH: Until we examine the individual inventors, we're not sure of the position on ownership.

(Discussion off the record.)

MR. WELSH: I think I would like to go ahead and have these marked as exhibits. the Interrogatory record

(SANDERS EXHIBITS NUMBERED SIX, SEVEN AND EIGHT --

Assignments marked and entered.)

Q. (By Mr. Welsh) Were there any other documents which you found other than these patent agreements and the assignments there in the application files relating to the assignment of rights in the alleged inventions of said patents from the named inventors and/or negotiations relating thereto?

A. Not that I recall.

Q. Did you find and produce any documents relating to the licensing or sale by the inventor or either plaintiff of rights in the alleged inventions of said patent and/or negotiations relating thereto?

A. A number of documents.

Q. I wonder if we could obtain those and ask you to identify those for the record?

MR. ANDERSON: Here are some files relating to negotiations of licenses and our general Mangavox file.

The Magnavox file you have a copy of; we have not brought the original down here.

Mr. Williams points out that you have been provided with all of the documents in response to the Interrogatory request out of the Magnavox file, unless they were identified as privileged.

MR. WELSH: I was led to believe this morning, when certain files had been marked to indicate confidentiality, that certain portions of the files had not been produced, specifically the drafts of agreements between Magnavox and Sanders Associates.

MR. ANDERSON: That is correct. In addition to the Magnavox file, we have the confidential files here in the room.

MR. WELSH: I am just a little confused, I guess, as to what has been produced and what hasn't, because I was told there were certain Magnavox files

that we hadn't received.

MR. ANDERSON: That is correct, and I told you this morning you have received the original executed, or you have seen the original executed Sanders-Magnavox agreement and relevant documents from that file that did not include drafts or royalty reports and documents relating to royalty reports, those documents we have produced in the room this morning, and have them in the room. The file we showed you previously, you have ordered copies of appropriate documents and that's why we don't have that file in the room at this time.

(Discussion off the record.)

MR. WILLIAMS: They're our Magnavox correspondence files.

MR. WELSH: Are these in separate files which can be identified, because I, at this point -- you're talking about one and apparently --

MR. WILLIAMS: That's what I started out to do. They're our Magnavox

correspondence files, one for 1973, one for 1974 and one for 1975. Copies of those files were sent to Chicago last June, I think it was preparatory to some depositions taken by Seeburg and produced and removed the documents responsive to the Seeburg request and used all of those. We produced all of those at the request of Mr. Goldenberg and he saw those and you have seen those. We, in response to your request, we went through this file again and picked out any documents that were responsive to your request which had not previously been produced for Mr. Goldenberg, and you have seen everything responsive to your request which was in the Magnavox correspondence file.

MR. WELSH: But they're not here.

MR. WILLIAMS: We talked about this briefly yesterday. I think they're in the building and if you need the originals of any of those documents, we can produce them.

MR. HERBERT: I want the record

to be clear, Mr. Williams, that you're referring to Mr. Welsh and Mr. Katz. We have not seen any of the documents that I am aware of.

MR. ANDERSON: Mr. Herbert, as I mentioned during the break, we would be happy to make copies of those available to you in Chicago at any time.

MR. HERBERT: There are copies in Chicago?

MR. ANDERSON: Yes.

MR. HERBERT: Are you aware whether the copies you have in Chicago are sufficiently legible?

MR. WILLIAMS: We haven't had any trouble with them.

MR. ANDERSON: And no complaints from the other side that I know of on those.

MR. KATZ: These are Magnavox documents that you're talking about, the correspondence files?

MR. WILLIAMS: Sanders' files relating to correspondence with the

Magnavox Company.

MR. KATZ: Do you recall, Mr. Williams, when you furnished us with, I believe you said, copies of those documents, copies of certain of those documents in the Sanders Magnavox correspondence files 1973, '74 and '75?

MR. WILLIAMS: You were given access to the copies of the documents.

MR. WELSH: Which you had checked out of the file?

MR. WILLIAMS: As responsive to you at the time, to your Interrogatories, and you looked at those, I believe, in July.

MR. WELSH: That was my recollection, too, and that is what I just wanted to confirm, because I don't recall that we had been furnished anything additional in that regard so far as our present request is concerned.

MR. KATZ: Except that, first of all, the copies which you furnished in July, did they not contain expunged

portions?

MR. WILLIAMS: I am sure that they did. We had no protective order in July and there were documents which had material expunged from them when we produced them.

MR. WELSH: So that we have not seen the originals of the documents of which you furnished copies, and you made your selection of the documents which you furnished to us on the basis of our original Interrogatories.

MR. WILLIAMS: There was another production in August, I believe, and it was in response to this Midway document request which was primarily which included additional documents.

MR. KATZ: They didn't include the original documents from the July inspection.

MR. WILLIAMS: We did not reproduce any documents, because you looked at the July documents and you had ordered copies. And I said I w

MR. KATZ: August inspection was mainly Magnavox. That was the inspection at which time there was a film produced; I think I mentioned that to Ted and I was in to make that inspection. Do you recall?

MR. ANDERSON: I recall you coming in.

MR. KATZ: Was that the inspection you're talking about?

MR. WILLIAMS: I was not present then.

MR. ANDERSON: We made those available to you.

MR. WILLIAMS: They may have been primarily Magnavox, but there were some Sanders documents, also.

MR. KATZ: I thought it was entirely Magnavox, so what Don said was correct, that we never saw the originals. The documents that were produced, the copies of which were produced in July.

MR. WILLIAMS: That's right, and you just requested and I said I was

separating the originals, and you said you didn't need to see them unless you were having trouble with the copies, and we haven't produced the originals this morning.

MR. WELSH: At the time, yesterday, when I said that, I guess I didn't recall that there had been some material expunged. Do I understand that the originals are available now?

MR. WILLIAMS: Yes, subject to the protective order, yes.

MR. WELSH: I think we definitely will want to see those.

MR. WILLIAMS: Any additional documents?

MR. WELSH: I can't say at this time, if the documents respond to our request.

MR. ANDERSON: It would be somewhat of a task to go through and pull them all. If you have satisfactory copies and don't need them, I think it should suffice.

MR. WELSH: If something is
expunged --

MR. HERBERT: Let me suggest
that when you go to Chicago, you bring
your copies that do not have the things
crossed out.

MR. ANDERSON: I think our
copies are the same, but I am not sure.
I think we can assemble the originals of
those documents by some time tomorrow,
maybe first thing in the morning, but at
least some time tomorrow.

MR. WELSH: Okay. Up to
date as of this time?

MR. WILLIAMS: I guess I don't
agree with that necessarily.

MR. WELSH: In accordance with
the Notice.

MR. ANDERSON: No later than
the day of the Notice, certainly.

MR. WELSH: I presume the
Notice was to bring requests to produce
at the deposition, the documents, not
documents as of the date of the Notice.

MR. ANDERSON: Well, certainly requests of that kind are not ongoing and have to have a cutoff date. On the question of the proper cutoff date, don't want to get involved in that, and under that Notice didn't have the 30 days for the requirement of documents and not necessarily standing on that, and will bring in tomorrow what we can.

MR. WELSH: If you bring them, there won't be a question. If you're not going to bring them, then there is a question; but, if you're going to bring them, then we can perhaps go forward.

MR. ANDERSON: We'll produce tomorrow morning or sometime tomorrow, as best we can in accordance with your request.

MR. WELSH: All right.

Q. (By Mr. Welsh) Now, Mr. Seligman, what documents do you have relating to this licensing or sale by the inventors or either Plaintiff of rights in the alleged inventions, of patents and/or negotiations related thereto?

A. Other than the Magnavox document file, I have various files regarding licensing attempts or negotiations with other corporations.

Q Could you take them individually and identify them?

A. All right. The top one is a file regarding negotiations which we held with R.C.A.

Q That is a folder with a paper attached to it?

A. Yes.

Q Would you go on?

A. With respect to what?

Q Identifying the different files.

A. You want to take them one at a time?

MR. ANDERSON: With respect to

R.C.A., I might point out there is an additional collection of confidential documents relating to the R.C.A. situation.

If you want to have the witness identify those right away, as long as he's on R.C.A., and, Mr. Seligman, the contents of the documents we consider to be confidential, but you can identify them to Mr. Welsh for the record to show what was produced.

A. These are further documents concerning the negotiations that were held with R.C.A.

Q (By Mr. Welsh) Could we describe that as a group of sets of attached sheets of documents plus two blank folders all connected by a rubber band?

A. That is a fair description.

MR. ANDERSON: That is apt.

Q (By Mr. Welsh) Where did you obtain those to bring them here?

A. Those are a part of our R.C.A. negotiation files.

Q. Were they in the same place as the folder marked "R.C.A." and which you just described earlier?

A. I believe so.

Q. The folder itself appears to be located in another folder. Does that have any identification?

A. It is identified as "T.V. gaming device, potential licensees" and bearing number 300.

Q. Were you reading that identification from a label affixed to the folder?

A. Yes, the brown folder, yes.

Q. Did that R.C.A. folder, when you brought it here, did you find it in that outside folder with T.V. gaming device, number 300, potential licensees?

A. I believe when we first were looking for documents, they were all found. These documents were all found together in this folder.

7 Q And was there included with those documents, also,
this other group of documents?

A. I would certainly assume so.

8 Q Where was that folder, the "T.V. gaming device, 300,
potential licensees" located?

A. I believe in the files of the Patent Department.

9 Q Do you have any doubt about that?

A. Not much.

Q Do you have any?

A. I don't remember exactly pulling this file out of
the file, whether I did it or any secretary did it,
but I am sure it must have been in the Patent
Department files. These are our files.

Q Are licensing matters handled by the Patent
Department?

A. Yes.

Q Under Mr. Etlinger's direction?

A. Yes.

Q Does the number 300 have a significance?

A. I assume it is our file number.

Q Other than the R.C.A. documents which have been
identified, were there any other documents in that
folder?

A. I have a Manila folder here.

5 Q Is there any identifying mark on that Manila folder?

A Nothing. It has a number of loose papers, including a list of persons and companies and a number of Dun and Bradstreet reports and other credit reports of companies.

6 Q Do you know who placed those documents in that folder?

A No, I don't.

Q Is that entire file "T.V. gaming devices" under the control of Mr. Etlinger?

A Yes, under his supervision anyway.

Q Has that been the case ever since you've been associated with that Patent Department?

A Yes, he has been the supervisor of that department.

Q You don't know specifically who placed these documents?

A It could have been any one of a number of attorneys or secretaries.

Q You stated there was a list of companies in that unmarked folder?

A A list of names and companies.

Q Do you know who prepared that list?

A No, I don't.

Q Do you know who would know?

A Possibly Mr. Etlinger.

Q Anybody else?

- A. I don't believe anybody else would know.
- Q. Were there any other folders in that file, "T.V. gaming device, 300"?

A. A Manila folder labeled "Westinghouse Electric".

Q. What does that contain?

A. It contains a couple of draft agreements or maybe one draft agreement and a copy ~~offering~~ thereof, and some letters offering to demonstrate the gaming device to Westinghouse provided they would sign a Proprietary Agreement and also a letter that they're not interested in pursuing it.

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Q. Was that correspondence with someone acting on Sanders' behalf?

A. Yes.

Q. Who was that?

A. Mr. Etlinger.

Q. Are there any other folders or files in that folder marked "T.V. gaming devices, number 300"?

A. Another Manila folder labeled "Warwick" containing an agreement, Proprietary Agreement and correspondence between Warwick and Sanders.

Q. Was Mr. Etlinger, again, the party acting for Sanders?

A. Yes, he was.

Q. Who is Warwick?

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- A. Warwick is an electronics manufacturing company.
- Q. Were there any other folders in that folder?
- A. Another Manila folder labeled "Sony", again containing draft agreements and correspondence between Sanders and Sony, by Mr. Etlinger.
- Q. Any other files in there?
- A. The next one is "Motorola", containing, again, agreements and correspondence between Motorola and Sanders.
- Q. Who was acting on behalf of Sanders?
- A. Mr. Etlinger. The next folder is like the others, an agreement and correspondence, and in this case between General Electric and Sanders, also agreements assigned by other companies who, I guess, were providing consultation to General Electric in this matter.
- Q. What companies were those?
- A. Let's see. Burke Marketing Research, Inc. This one is between General Electric and Analytical Research, Inc. Those are the only other agreements I see in this file.

MR. ANDERSON: Mr. Welsh, from this file that Mr. Seligman has been identifying, labeled G.E., we have

removed a collection of documents that we consider to be of a confidential nature.

MR. WELSH: Again, if I understand correctly, they were taken from the files that he just described?

MR. ANDERSON: That's correct. You may look at them.

(Discussion off the record.)

Q (By Mr. Welsh) Would you identify other files in that folder?

A Yes. The next file is a Manila file labeled "Zenith" and also containing agreements between Zenith and Sanders and some correspondence between Zenith and Sanders by Louis Etlinger. This file, and maybe some of the others, I haven't commented before, but contain a copy of a visitor's pass, indicating who came to Sanders.

Q Is that a practice of your department, to keep copies of passes issued to visitors to your department?

A It is a practice to receive them. Unfortunately, we don't retain them too often. Maybe I am wrong in that. I don't know.

Q Would Mr. Etlinger know?

A He would know more than I. Most of the visitors were

to see him and not me. The next one is a Manila folder labeled "Welwyn Electric" and a copy of an agreement.

Q Are there any other files in the folder?

A The next one is a Manila folder labeled "Philco-Ford" containing two copies of an agreement and a letter from Sanders Associates by Mr. Etlinger to Philco Company-Ford. The next item in this group is a Manila folder labeled "Sylvania". It contains an agreement and correspondence or letters signed by Mr. Etlinger to Sylvania.

Q Are there any other files in that folder?

A No. I believe that's it.

Q Other than the files in that folder and the portions which have been removed and are being treated as confidential under the protective order, did you find any other files relating to licensing or sale by the inventors or either Plaintiff of rights in the alleged inventions of said patent and/or negotiations relating thereto?

A No. Everything I pulled out was given to Mr. Williams.

Q Do you have anything else?

A There is another Manila folder labeled "C.A.T.V." containing agreements, visitor's pass, some handwritten

notes.

Q Do you know whose handwritten notes those are?

A Probably Mr. Etlinger's.

Q And you're looking at a sheet dated 2-5-68?

A Yes.

Q You say "probably Mr. Etlinger's"?

A I can't say for sure.

Q Are you familiar with his handwriting?

A Yes.

Q Does that appear to be his handwriting?

A That is why I say possibly, but it is my best guess that it is.

Q Do you believe that it is?

A Yes, I believe it is. The next ones are some handwritten notes followed by a portion of a page from Electronic News of February 5, 1968.

Q Do you recognize the handwriting of those notes?

A I think I do, but I am not sure, again.

Q Whose handwriting do you think it is?

A I think it is Ralph Baer's.

Q Does that bear a date or other identification?

A 1/68.

Q Is there a title on that?

A "Possible approaches to T.V.G."

- Q. Do you know what the T.V.G. means?
- A. I don't know what it means, T.V. Gaming, maybe, that's only a guess.

- Q. Has that term "T.V.G." been used in subject matter of these patents?

I have used the term "T.V. Gaming." I haven't used the term "T.V.G." but --

- Q. Would you go ahead with the identification of the documents in that file?

A. All right. It is a group of stapled documents, a letter and a copy of a letter from Mr. Baer to Mr. Cohn of Teleprompter, dated January 8, 1968, but unsigned; and the next one a letter from Mr. Schlafly of Teleprompter to Mr. Baer. The next one is a listing of some corporations.

- Q. Attached to the other letters?

A. Yes. A visitor's pass from Mr. Cohn and some handwritten notes dated February 6, 1968.

- Q. Do you recognize the handwriting on those notes?

A. I can't take a guess on that one. The next one is some further handwritten notes, also attached to the previous notes, dated 19 February, '68.

- Q. Do you recognize the handwriting there?

A. Looks like Ralph Baer.

- Q. Could you go ahead? What other documents are there in that file?
- A. Two sheets of handwritten notes stapled together, along with a business card of Mr. Schlafly. The second of the two are dated 19 February, '68.
- Q. Do you recognize the handwriting there?
- A. I can't take a guess at that one either. No, I can't guess.
- Q. Could you just maybe, a little more generally and not quite so specifically, tell us what else is in that folder marked C.A.T.V.?
- A. Two typewritten pages, three paragraphs identified by Roman numerals I, II, III. The next one is three pages, two typewritten pages plus some kind of a block diagram dated March 5, 1968. The next one is three pages; the top page is a letter from Mr. Etlinger, dated April 12, 1968, to Mr. Cohn. The next one is a letter from Mr. Etlinger to Mr. Cohn dated April 9, 1968. The next one is three typewritten pages entitled, "Sanders Associates/Teleprompter Association". The next one is eight pages stapled together entitled, "Functions of New Company". The next one is 12 stapled pages entitled, "C.A.T.V. Industry Summary". The last item in this file is 4 pages entitled,

"Program Plan".

31 Q. Did that file come from the same folder from which the other files -- the name was T.V. Gaming Devices, 300, Potential Licensees. Did that folder marked "C.A.T.V." come from there?

A. I can't recall where I found this folder. Perhaps some documents from it came from the same place.

2 Q. Could it have come from Mr. Baer's files?

A. His name is identified in the corner of the file.

3 Q. That is on the outside cover?

A. Yes, and some writing on there which could possibly be his handwriting.

Q. So it could possibly be. Does it appear to be in his handwriting? Are you familiar with it?

A. I would take a guess that it is.

Q. You're not sure where that came from?

A. No.

Q. Do you know who would know?

A. If it came from Mr. Baer's file, I assume that Mr. Baer would recognize the file.

Q. But you don't recall yourself?

A. No. When we pulled all the files, we didn't identify where we took them from.

Q. Did you obtain some of them from Mr. Baer?

A. Oh, yes, many.

Q Would you take the next file and identify that, please?

MR. ANDERSON: Mr. Welsh, it seems that this will take an ordinary amount of time. Is there any way, by agreement or stipulation, that we can expedite this?

MR. WELSH: I think we got into more detail than I felt necessary with the entire question of the C.A.T.V. file. I don't know how to expedite where they come from, and they relate to the same subject generally, and they came from different places, and I think we can avoid the identification of the documents within the files, because they will remain the same.

MR. ANDERSON: We'll agree to keep them intact, the way they were produced here today, if that will expedite it.

MR. WELSH: I think that will expedite it quite a bit.

Q (By Mr. Welsh) Mr. Seligman, did you make a list of any places where the files came from or any index of

the files?

A. No, I didn't.

Q. Do you know if there is a plan to return the files after this matter is concluded?

A. We have never given it that much thought.

Q. Would you identify the next folder, generally, without going into the specific details, maybe?

A. A Manila folder containing lots of handwritten notes, copies of agreements, business cards, memorandum, some kind of a brochure entitled, "T.V.G. - Negotiations - G. E., R.C.A., Sylvania and Motorola". Ralph Baer's name appears in the upper right-hand corner of the front page of this folder, and I believe that's his writing, also appears a number of companies and dates and what have you on the front cover, and it does, the signature in the upper right-hand corner appears to be his. I think it is his.

MR. ANDERSON: I will hand you a document contained within a rubber band and we consider it to be confidential and removed from the file Mr. Seligman has just identified and show them to you under the Protective Order.

MR. WELSH: I think they were

furnished yesterday.

MR. ANDERSON: Yes, I think you have seen them before.

MR. WELSH: Did they come from that file?

MR. ANDERSON: They came from the first, R.C.A., Zenith and Motorola, which Mr. Seligman has just identified.

MR. WELSH: We haven't been doing this with respect to the others, but can put that in the file, unless you want to keep it out.

MR. ANDERSON: We have labeled each collection of confidential documents, as you know, and the one I just handed to you, and the file from which they were removed. That is how I am able to identify as we go along, and I would rather, for the moment, keep them separate, so there would be no confusion as to who can see what and so forth.

MR. WELSH: I believe that Mr. Herbert said he was going to agree to the Confidential Disclosure Agreement.

MR. ANDERSON: So I understand.

MR. WELSH: Is it going to be necessary for that to be typed up and signed in case we want to examine any of these documents during this proceeding?

MR. ANDERSON: I think we can work that out when the question arises.

MR. WELSH: Fine.

Q. (By Mr. Welsh) Did your search reveal any other documents relating to the licensing or sales?

MR. ANDERSON: I will hand Mr. Seligman two collections which are also confidential documents, which we have removed from the production which he delivered to us, and I think is within that general subject matter.

A. A Manila folder entitled, "G. E. License T.V.: Gaming, File Number 270".

Q. (By Mr. Welsh) Do you know where that file came from?

A. That would be a Patent Department file.

Q. Do you have some other loose documents that were not in that file?

A. Yes. There is an agreement labeled, "Company Private Data, 74-C 1030.

Q. What other identification is there on that?

A. "G. E. License, T.V. Gaming, File Number 270".

Q. And also, as far as I can see, that folder itself is not considered confidential?

MR. ANDERSON: That is correct.

The folder and one letter inside the folder are not confidential. The collection of documents clipped together, which I handed to the witness, are all stamped and considered confidential under the Protective Order.

(Discussion off the record.)

MR. ANDERSON: I will hand the witness another folder that we have stamped as I indicated previously, and it is under the Protective Order.

Q. (By Mr. Welsh) Would you identify that folder, please, Mr. Seligman?

A. Bears a title, "R.C.A. License Agreement, T. V. Gaming File Number 269".

Q. Do you know where that file came from?

A. That would have come from the files of the Patent Department.

Q. To whom is access to the Patent files made available?

- A. The attorneys who work in the Patent Department plus the secretaries that work there.
- Q. Are those files maintained under any particular security?
- A. Most of them bear a lock.
- Q. When you say, "Most of them bear a lock," do you mean file cabinets in which the files are kept?
- A. Yes, bear a lock.
- Q. Are those maintained in a locked condition?
- A. They are generally locked at night before we go home and opened in the morning.
- Q. Does some particular person in the department have the responsibility for that?
- A. My secretary generally is the one that opens and closes the files, but not necessarily. Other nights, some of the other women do it.
- Q. Does anyone have the ultimate responsibility for that?
- A. For opening and closing them? *the rest of it*
- Q. And making sure that they're closed?
- A. Not that I know of, but I really don't know.
- Q. Is the Patent Department area subject to being locked?
- A. No. There are only two offices, an office and a conference room in the area. The rest of it is open.
- Q. Are the files then contained in the open part?

- A. The open part.
- Q. Are there any more licensing or sales documents which you have produced?
- A. One entitled, "T.V. Gaming, Individual Proprietary Agreements, File 292".
- Q. Do you know where that file came from?
- A. That is a Patent Department file.
- Q. Any others?

MR. ANDERSON: I will hand the witness another file which has on top of it a group of documents which we have stamped to indicate they come under the Protective Order.

MR. KATZ: Were those taken from the previous file?

MR. ANDERSON: They don't go with anything else that I know of.

- A. "T.V. Gaming Number 126" is on the outside of the file.
- Q. (By Mr. Welsh) What is the loose document?
- A. It is a three-page letter to Mr. Etlinger from General Electric.
- Q. Do I understand correctly they came out of this T.V. Gaming File 126?
- A. Yes.

Q. Do you know where this T. V. Gaming File number 126 came from?

A. Yes, the files of the Patent Department.

Q. The files from the Patent Department appear to have numbers assigned to them?

A. That is correct.

Q. Is there a system of incorporating numbers?

A. Yes.

Q. What is that system?

A. Consecutively, generally starting with one and each new file is assigned the next higher number. Though many times when a particular file is not needed any more, or destroyed or what have you, we may use the old number again.

Q. Do you keep a record of current numbers?

A. Current?

Q. An index, for example?

A. Yes, we have an index.

Q. Do you apply or assign numbers to the files consecutively, regardless of the type of file, or do you have some files that are not assigned numbers consecutively?

A. Files containing patent disclosures, patent applications, foreign patent applications, and so

forth are assigned numbers according to particular
~~dockets~~
assigned documents for the particular case or
application. Everything else is put into them,
well, not everything else. Most everything else is
put into the numbered files, contract files and
other files that are kept separate, too.

R/5
2/23/76

Q. Do the contract files have a numbering system?

A. Yes, the contract number.

Q. That is maintained separately from the consecutive
numbering system that has been applied to the files
that you have produced here today?

A. Yes.

Q. These relate to contracts, do they not?

A. The contract files are Government contract files.

Q. Oh, and these files may include private contracts,
that is, the numbered files like you produced here
today?

A. Yes.

Q. Are there other files relating to licensing or sale?

MR. ANDERSON: I will repeat

again: We have not tried to classify the
files by paragraphs of your request or
by subject matter, but we have three more
files here that could be construed, perhaps,

mistranscribed R/5
2/23/76

as relating to licensing or negotiations of licensing and I will hand those to the witness. Two of them are not marked confidential. One is under the Protective Order. I'm sorry. Mr. Williams has corrected me that all three are under the Protective Order and two are stamped inside and the third one is stamped on the cover.

- Q. (By Mr. Welsh) We'll take them one at a time. Would you identify them, Mr. Seligman?
- A. Yes. The first one labeled "Magnavox Company File Number 637 Royalty Reports".
- Q. The next file?
- A. The Magnavox Company drafts of an agreement file number 637.
- Q. And the third?
- A. The Magnavox Company file number 637 (Executed Agreement).
- Q. Are there any other files relating to the licensing or sale of rights in the alleged inventions of said patent and/or negotiations relating thereto?

MR. ANDERSON: Nothing else that comes to mind.

MR. WELSH: Of Sanders, of course.

MR. ANDERSON: Of Sanders.

Q. (By Mr. Welsh) Under paragraph three of the attachment to the subpoena and the deposition notices, there are described communications between Plaintiff Magnavox and Plaintiff Sanders relating to a. any business arrangements -- before we go on to that, the responses to the request for documents, which was similar in description of the documents and things to the attachment to the subpoena and other notices of depositions, listed certain documents which would not be produced in their entirety, and referred to other documents from which portions, claiming to be subject to a claim of attorney-client privilege or attorney work product, were deleted. Now, the documents listed, I presume, are not included among those produced, is that correct?

MR. WILLIAMS: That is correct.

MR. WELSH: In other words, you are still not producing those documents?

MR. WILLIAMS:.. The numbers of documents listed are actually Magnavox

and in the custody of Sanders and would not be produced anyway.

MR. WELSH: Was the same thing true of the documents, which portions were deleted?

MR. WILLIAMS: That's correct.

Q. (By Mr. Welsh) Now going on to paragraph three, referring to communications between Plaintiffs Magnavox and Sanders, relating to a business arrangement or agreement between them involving the alleged inventions or subject matter of said patents, have all of the documents falling in this description been produced, except for the others you're going to make available some time tomorrow?

MR. ANDERSON: That is correct.

Either they have been produced here in this room at the present time or they are in the group that we had given you copies of previously and will produce tomorrow as soon as we can.

MR. WELSH: The next subparagraph b. of paragraph C, "Communications relating to subject licensing of any other part under said patent or application

therefore", is the same thing true with respect to those documents?

MR. ANDERSON: I think you have the production of Sanders, paragraph 3b. and they have been identified or would be in the group that we'll bring in tomorrow morning.

MR. WELSH: The responses to this paragraph, or the requests made a claim of attorney-client privilege. First of all, there was an objection to the furnishing of documents with respect to royalty rates and I understand those copies which have been furnished with the royalty rates portion deleted, have now been made available to us under the Protective Order.

MR. ANDERSON: Yes. In this group that you referred to or, might be some in that category that you will see tomorrow morning.

MR. WELSH: There was the response with respect to paragraphs a. through h. of paragraph three, an

objection insofar as the request documents for which claim of attorney-client privilege or attorney work product and a list of 18 specific written communications or documents relating to them, have those been brought to this deposition?

MR. WILLIAMS: Many of them are Magnavox documents.

MR. WELSH: While many of them may be, there are several of these others that are not solely Magnavox. Have those documents which are in the possession of Sanders been brought to this deposition?

MR. WILLIAMS: They're not in this room right now.

MR. WELSH: In other words, they have not been brought to the deposition for the reasons stated in your objection to the subpoena, I presume?

MR. ANDERSON: That, plus our objection and our response to the request to the production of documents.

MR. WELSH: I might say that there may be some of these documents that

are listed, about which I would like to question various witnesses, even though I do not see the documents, it may be desirable to have them for the witnesses to view in answering the questions. Now, I know that some of the documents that have been listed in your responses to our requests, there have been some which we will want to have available when the witnesses are being examined.

MR. ANDERSON: I suggest we face those as they arise or give us a short warning in advance and take it under advisement.

MR. WELSH: Okay. I think we'll be able to do that.

Q. (By Mr. Welsh) Now, going on with sub-paragraph c. of paragraph three, Communications relating to licensing or subject licensing under any foreign patent or foreign patent application corresponding to said patents. Have those documents been produced?

MR. ANDERSON: No, they have not. As we stated on page 5 of our response to your request for production of

documents, those documents are neither relevant to the subject matter of the action and are not being produced.

MR. WELSH: Do I understand, also, that they're not being brought to the deposition under the subpoena?

MR. ANDERSON: As I stated earlier, we give the subpoena no greater power or credit than the Notices of Deposition for the request for production of documents and the subpoena is not a proper way to proceed against a party.

MR. WELSH: I don't propose to argue that at this point. I will say, however, that we do disagree with you.

MR. ANDERSON: In any event, the Federal Rule of Civil Procedure provides for the objecting of production of any documents which relieves the necessity for providing it even if the subpoena is --

MR. WELSH: I don't believe they provide for failure to bring a document called for in a subpoena. Even

if the parties subpoenaed expect to object
to them --

MR. ANDERSON: It is one matter
not to bring them and another not to
produce them. The subpoena does not
require the production for the inspection
of the parties responsible for the subpoena.

MR. WELSH: I have already
indicated, some of the documents you have
indicated in your response to request for
documents that we may want to examine
these witnesses with the documents in front
of them; and, if we can agree, I believe
there are only a few of those and we have
agreed to furnish you with a list and,
perhaps, we won't have a problem because
there won't be many of those.. Now with
respect to sub-paragraph d., Communications
identified as royalty or other payment
made or collected in connection with or
under said patent or any licenses relating
thereto, have those documents been
produced?

MR. ANDERSON: Yes, to the

best of our knowledge, you have seen those documents and the file has been laid before Mr. Seligman.

MR. WELSH: I am going to sub-paragraph e., Communications regarding the strengths and/or weaknesses of said patents. Have those documents been produced?

MR. ANDERSON: We don't classify, to the best of my knowledge, any files or documents according to the strength or weakness. We don't think the patents have any weaknesses. Whatever documents you might consider to fall into that category would be within the documents produced, in the custody or control of Sanders, of course. We aren't producing here documents of Magnavox.

MR. WELSH: These are communications between Magnavox and Sanders regarding the strengths or weaknesses of the patents?

MR. ANDERSON: Any documents

relating to the patents will have either been produced, that come from Sanders' files will have been produced here today or listed as privileged or a work product document and excluded, but of which you will have been notified.

MR. WELSH: I want to be sure if they have been produced or they're listed.

MR. ANDERSON: That is true.

MR. WELSH: With respect to sub-paragraph f. of paragraph three, Communications between Magnavox and Sanders regarding infringement of said patents or the possibility thereof by any parties.

MR. ANDERSON: The same is true as with respect to e. and the same would apply to g.

MR. WELSH: That is, with respect to Communications regarding misuse of said patent or the possibility thereof by either Plaintiff?

MR. ANDERSON: Yes.

MR. WELSH: . H. is regarding antitrust violations or the possibility thereof by either Plaintiff in the licensing or enforcement of said patents.

MR. ANDERSON: Again, with respect to those, I think it is a question of how you might construe those terms, but any document that anybody, including you, I think, could construe as product and under g. or h. would be within the documents listed or produced or identified.

We don't know any that we would classify in those categories, g. or h.

MR. WELSH: Under paragraph four, the investigation by Magnavox and/or Sanders of possible infringement of said patent and/or the examination of any video games in connection with such investigation.

Q. (By Mr. Welsh) Did your search, Mr. Seligman, reveal documents falling into this category?

A. I believe so.

Q. What are those? (He was held to a

A. The first one is a red, bound folder containing

information of a trip report of Mr. Baer at the M.O.A. seminar show in Chicago.

Q On what date or dates?

A A memo of the trip report is November 13, 1973.

Q Where did that document come from?

A I don't know whether it is from Mr. Baer's files or from the Patent Department files. I don't recall whether he sent that over to us or not.

Q Do you recall when you obtained that binder?

A No, I don't.

Q Do you know who prepared the memorandum?

A The memorandum is from Mr. Baer.

Q To whom is it addressed?

A Distribution.

Q Any distribution indicated anywhere in the document?

A No, I don't see any here.

Q Could you go on to the next document?

A Black loose-leaf notebook having a label on it which says, "Video Arcade Mach Data File R. H. Baer", contains a program of the 1974 M.O.A. show.

Q Does that have a date, that program, or dates when that occurred?

A Apparently the show was held November 1, 2 and 3.

Q What is M.O.A., do you know?

- A. Musical Operators of America.
- Q. Is that what you know M.O.A. to be?
- A. I never did remember what M.O.A. meant.
- Q. Go ahead and identify what documents are there.
- There appear to be sections. Perhaps you could --
- A. There is a Table of Contents or an Index in the front of it.
- Q. Could you read the Index?
- A. A. is Coin Industry/Arcade Video Press Releases, et cetera. B. is not identified.
- Q. Would you look at Section B. and see what's in there?
- A. Nothing.
- Q. Does the page with the Index bear any signature, anybody's name?
- A. R. H. Baer.
- Q. Is that where that notebook was obtained?
- A. I would guess from Mr. Baer's files.
- Q. Did you obtain it from him?
- A. I can't say for sure but it certainly is a notebook, if he kept it, it is his writing all over it.
- Q. Had you seen the notebook before obtaining it to produce here?
- A. I don't know. A lot of the documents in here are

familiar. I don't know if I had seen the actual notebook.

- Q Do you know whether any documents were removed from this notebook before or after it was obtained in your search and before it was produced here for us?

MR. ANDERSON: Mr. Welsh, in your first request for documents or perhaps in the Interrogatories, which included the request for documents, you specifically asked for documents relating to Midway and Chicago Dynamics Industry Products and at that time a set of documents were removed from the book, notebook, and produced for your inspection, and they were here on the table in front of you here yesterday and today, and later you brought in that request to include games of companies other than Midway and Chicago Dynamics, and, consequently, the black book was produced, in response to your late broadened request.

MR. WELSH: Do you know if they were all removed from one section of the notebook, or different parts of it?

MR. ANDERSON: I don't know.

MR. WELSH: Who did the removing?

MR. WILLIAMS: Ralph Baer.

MR. ANDERSON: Ralph Baer did, as we understand it.

MR. WELSH: Is that his notebook?

MR. ANDERSON: To the best of our knowledge, that is his notebook.

MR. WELSH: Have any documents been removed because of a claim of attorney-client privilege or of work product?

MR. WILLIAMS: In that notebook, no.

Q. (By Mr. Welsh) Could you go on now? There appears to be tabs or dividers in here, is that accurate?

A. Yes.

Q. Could you just go on with the reading of the Index there, and I think you reached C.

A. C. is labeled Correspondence. The next word may be -- it is illegible.

(Discussion off the record)

Q (By Mr. Welsh) There are no documents in section C.?

A No.

Q Would you go on with D.?

A D. is labeled M.O.A. Show Data Collection.

Q Could you look at section D.? Does that indicate a particular -- appear to relate to a particular M.O.A. show?

A There is a separate folder in D. which says November, '74 M.O.A. Data. Original is signed R. H. Baer.

Q Anything else in that section?

A There are some copies of handwritten notes, memoranda of a trip report.

MR. WELSH: Mr. Anderson,

just glancing at those upside-down, it appears that those might be the originals which you have produced -- I mean copies re turned in the notebook are the originals you might have produced earlier or you did produce.

MR. ANDERSON: We made no

effort to correlate them today or

yesterday. We can do that.

Q (By Mr. Welsh) Anything else there in section D.?

A Various brochures of T.V. games, Dun and Bradstreet

report, brochures from a Cashbox Magazine and newspaper release dated October 26, '73, by Allied Leisure.

Q. Do those seem to be separated, the ones you're going through now, with yellow paper that has some legend on it?

A. Yes, it says Allied Leisure.

Q. And has a number on it?

A. Yes, one.

Q. And a segregated document following those?

A. Yes.

Q. And what does the divider of the second group have, a legend?

A. M. Utronics.

Q. Are there other sections?

A. Three is Atari.

Q. Are there other sections?

A. Brunswick is labeled three, Chicago Dynamics is labeled four, Midway is labeled five in red or 6A in blue pen. 6 in red or 6B in blue pen is labeled Fore-Play. There are a lot of other papers in here. I don't know if they're broken down any more. The next one is 7, Nutting Associates. 8 is P.M.C. 9 is Ramtech. 9A is EGA. 10 is U. S. Billiards.

11 is Williams Electronics Division Seeberg. That is the end of that section.

Q. The next section appears to be F. Do you find any section E.?

A. There is no section E. in here.

Q. Is there a section E. indicated on the Index?

A. There is a section E. indicated but there is no notation next to it.

Q. What did section E. relate to?

A. There is nothing there.

Q. No title or anything?

A. No.

Q. How about F.?

A. F. is titled P. C. Boards Manufacturing Data.

Q. G.?

A. G. is Component (Catalog) Data (a word I cannot read, Hardware).

Q. Are there any documents in section G.?

A. Nothing.

Q. Is there any indication as to any documents identified for section H.? I will be continuing, "1975 G.O."

A. S.D.S., Bid data.

Q. Do you know what S.D.S. means?

A. I don't know what he intended by it, no.

Q. Are there any other documents in section H.?

A. No.

Q. Is there a section I.?

A. I. is identified by A.L.Fore-Play at Kenneth Data.

Q. And there is a section I.?

A. No.

Q. How about J.? Does that appear in the Index?

A. J. is identified as J. Freeman File 603-673-5139.

Q. Are there any other documents in that file which you have not referred to yet?

A. No, there are none. There are just blank index pages.

Q. Dividers?

A. Dividers.

Q. You also have some other documents relating to investigation by Sanders of possible infringement of patents in this suit. And Paragraph four is the investigation by Magnavox or Sanders of possible infringement of said patents and the examination of any video games in connection with such investigation.

Are there other documents?

A. Yes, I have a red folder here entitled, "1975 M.O.A. Show, T. V. Game Data (10/17, 18, 19) R.J. Baer".

Q. Do you know where that document came from?

A. I can't be sure, if I have seen this document before

or not.

Q. Does that contain a portion with papers bound?

A. Yes.

Q. Are there loose papers in it also?

A. There are some loose papers.

Q. What are the loose papers?

A. The loose papers are one set of loose papers identified V/T Buyers' Guide, 1975. 143 is listed. Whether this is page 143 or not, I don't know. The other is a reprint or a duplicate of an article from Electronic Magazine of October 30, 1975.

Q. What pages of Electronic Magazine?

A. 32 and 34.

Q. Is there also a program of the M.O.A., 1975 M.O.A.

Show?

A. Yes.

Q. In that folder?

A. Yes.

Q. Did you bring any other documents relating to the investigation by Magnavox or Sanders of the possible infringement of the patent and/or the examination of any video games in connection with such investigation?

A. A number of magazines.

- Q Where did you obtain those magazines?
- A I assume we obtained them from Mr. Baer. I notice that certain ones of them anyway are addressed to him.
- Q Certain ones or all of them?
- A Certain ones.
- Q Which ones are addressed to him? Just give the title.
- A Coin Industry Playmeter, Vending Times, 1975, Vending Times, Coin Industry Playmeter, April, '75, Coin Industry Playmeter, May of '75, Coin Industry Playmeter, June and July, '75, Coin Industry Playmeter, August, '75. Those are the only ones.
- Q Do you know who obtained these publications for production here?
- A I didn't personally receive them. I can assume that they possibly came from Ralph Baer.
- Q Do you know who assembled them with the other documents to be produced here?
- A Maybe Mr. Williams.

MR. WELSH: I'm wondering where they came from. Do you know?

MR. ANDERSON: They came from Ralph Baer and if a secretary put them in a pile or not, I can't tell you, but they came from Ralph Baer.

Q (By Mr. Welsh) - Would you just identify the others?

A There's a Cashbox 33rd Anniversary Edition, '75-'76,
Cashbox of November 10, 1973, Cashbox 1974,
M.O.A. Expo Special, Replay Magazine, October, 1975,
Vending Times International Buyers' Guide and
Directory, 1975, Coin Industry Playmeter, December,
'74, and Vending Times International Buyers' Guide
and Directory, 1975. I guess some newspapers; they
look like portions of newspapers. I'm not sure,
maybe the whole thing, I don't know. Vending Times,
June, 1975, Vending Times, October, 1974 --
starting over again, June '75 Vending Times. I am
not sure but I think Vending Times is V/T. Music
and Games, and seems to have a different title in
the upper right-hand corner and the large letters in
the front, I think it is Vending Times June, 1975,
pages 43 through 60 of Vending Times.

Q I think that it won't be necessary to go further with
those, as long as we have them and know they came from
Mr. Baer. The other ones are copies of Vending Times
or portions of ones you haven't identified?

A That's correct.

Q Were any other documents produced relating to
investigation by Sanders of possible infringement of

patents and/or examination of any video games in connection with such investigation?

A. I have another file here, a brown file full of miscellaneous papers.

Q. Does that file have a title?

A. Yes, it does, Magnavox Miscellaneous information on Computer Gaming Devices.

Q. Is there a label which is fairly loose on there and just attached on one edge?

A. Yes.

(Discussion off the record)

Q. (By Mr. Welsh) Do you know where this file came from, to be added to the documents?

A. I can't recall this particular file.

Q. Was this also from Mr. Baer?

A. Looking at the label, I could loosely guess that it came from the Patent Department files.

Q. Had you seen the file before it was added to the documents to be produced here?

A. I can't say for sure. So many of the documents look familiar in the file. I don't know if I saw them outside of the file or inside the file. I don't recall.

Q. Do you know who would know?

A. Maybe Mr. Etlinger.

MR. WELSH: You don't know and,

Mr. Williams, you don't know?

MR. ANDERSON: It is our best information that it is a file that either came from the Patent Department or possibly Mr. Etlinger in the Patent Department.

MR. WELSH: Any other documents which will be produced in the category of paragraph four?

(Discussion off the record)

MR. ANDERSON: That is all that we can immediately place in that category. Everything, to our recollection, has been produced.

Q. (By Mr. Welsh) Paragraph 5 of the attachment to the subpoena and deposition notices calls for the examination of any of the named inventors of said patent or either Plaintiff thereof, of any game or gaming device or documents disclosing same, employing a cathode ray tube displaying at least two images to the viewer, operating with or without a rafter scanning beam sweep of any type, and

containing circuitry for deflecting or responding to coincidence of the position of the images: a) prior to January 15, 1968, b) between January 15, 1968 and May 27, 1969, c) between May 27, 1969 and April 15, 1974. The response to this request for documents constituted an objection to the paragraph insofar as the requested production of documents relating to an examination by either Plaintiff as placing Plaintiffs under undo and unnecessary burden to supply the requested information. Was any effort made at all to search for documents falling within this category in response to the subpoena or Notice of Deposition?

MR. ANDERSON: The witness

has already testified about the search that was done and with respect to all categories, I believe.

WITNESS: All categories

with all pertinent information that could be located in Sanders Associates relating to the entire subject matter were looked for and gathered by myself and the people that aided me.

Q. (By Mr. Welsh) I believe that you indicated that

your search did not include any training devices.

A. Physical training devices?

Q. Yes.

A. Yes, that is true.

MR. WELSH: Do the Plaintiffs continue to object to this document request?

MR. ANDERSON: As stated in our response of August 11, 1975, yes, we do. I might state, with respect to the objection, we opposed with regards to subjects a. and b. in spite of our objections, we did state we made an effort to produce.

MR. WELSH: I would like to make one inquiry. In the latter part of your objection there, you indicated that those personnel of Plaintiffs, having direct responsibility for the maintenance of this action, have no knowledge of the existence of any such documents. I wonder if you could identify who those personnel are?

MR. ANDERSON: I think

Mr. Seligman has testified about the scope of the search that was made and the people connected, and so forth, and, to the best of my knowledge, I think that testimony applied to this paragraph and to the extent that it was broader than that, or his testimony was generally given and would not apply to this paragraph, I think you have to get that from him.

MR. WELSH: I think these responses were signed by you and the personnel, I presume you had certain people in mind when you referred to those personnel of Plaintiffs having direct responsibility for the maintenance of this action. I am just seeking identification of those people. He was not asked about that.

MR. ANDERSON: Again, I can only state as is true in producing documents or other discoveries, certain tasks are delegated, we intended to include Mr. Seligman, Mr. Etlinger, Mr. Briody and Mr. Williams and myself,

and anyone that searched by delegation,

by any of them.

MR. WELSH: I wasn't asking for persons who were searching. This is personnel of Plaintiffs having direct responsibility for the maintenance of this action.

MR. ANDERSON: If we had any knowledge, we would have not relied upon this technicality not to provide it for your request for the production of documents.

MR. WELSH: With respect to your objection as to sub-paragraph c. on page 8 of your responses, are you continuing that objection? I might say that,

MR. ANDERSON: Yes, we are.

I think you may have material falling within paragraph c, as a result of some other request, but that would be because they also fell within some other request, such as the one we just covered.

MR. WELSH: At the time that this request was made, the reissue patent

had not yet issued, I believe, and, however, at the time that the subpoena was served and the deposition day, of course, the reissue patents have issued.²¹ So we're talking about a later date and I just wondered, I think that the time period in c. is May 21, 1969, between then and April 15, 1974.

MR. ANDERSON: The time period in c. is May 27, 1969.

MR. WELSH: I'm sorry. I guess my question is whether you continue your objection to produce documents in that category following the period subsequent to May 27, 1969?

MR. ANDERSON: I might say that, assuming that the selection of the date, May 27, 1969, was based upon the filing dates of patent applications involved in this litigation and we did extend our search beyond May 27, 1969, up to August 21, 1969, which was the filing date of the 285 patent application, so we interpreted paragraphs b. and c. as intended

to go up to the filing dates of the patent applications in suit and did not cut off our work based on May 27, 1969, but rather based on August 21, 1969, but did not extend beyond that. Our objection under c. relates to all work after August 21, 1969.

MR. WELSH: And you're continuing on with that?

MR. ANDERSON: We're standing on that objection.

MR. HERBERT: The filing date is August 25th and not the 15th.

MR. WELSH: I realized that as I read it.

(The deposition recessed to be resumed at a later date.)

Whereupon the deposition of Richard I. Seligman was adjourned to be continued November 21, 1975, at 9:30 a.m.

Richard Seligman
Deponent